In Memoriam

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MEMORIALS

OF THE

ESSEX BAR ASSOCIATION

AND

BRIEF BIOGRAPHICAL NOTICES OF SOME
OF THE DISTINGUISHED MEMBERS
OF THE ESSEX BAR PRIOR TO
THE FORMATION OF THE
ASSOCIATION.

SALEM, MASS.
NEWCOMB & GAUSS, PRINTERS.
1900.

LOAN STACK

At a meeting of the Essex Bar Association, held February 6, 1900, it was voted: That WILLIAM D. NORTHEND and EDWARD B. GEORGE be requested and authorized to have printed in a volume the memorials that have been presented to the Court by this Association, with such notices of members of the Bar before the organization of this Association as they shall deem best.

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INTRODUCTION.

The first Essex Bar Association was formed in 1806. From a copy of the rules and regulations, printed in 1808, it appears that there were then twenty-seven members of the Bar in this county, as follows:—

Salem—Elisha Mack, Benjamin R. Nichols, William Prescott, Samuel Putnam, John Prince, jr., John Pickering, jr., Joseph Story, Samuel Swett, Leverett Saltonstall, Joseph Sprague, jr.
Newburyport—William B. Banister, Joseph Dana, Samuel L. Knapp, Edward St. Loe Livermore, Edward Little, Ebenezer Mosely, Moody Noyes, Daniel A. White.
Haverhill—Stephen Minot, John Varnum.
Gloucester—Lonson Nash, Nathan Bruce.
Marblehead—Ralph H. French.
Ipswich—Asa Andrews.
Beverly—Nathan Dane.
Andover—Samuel Farrar.
Lynn—John Stuart.

We find records of the proceedings of this Association in 1812. How much longer it was in existence we have been unable to ascertain.

In September, 1831, a new Bar Association was formed. It appears from a printed copy of its rules that there were then fifty-two members of the Bar in the county. The officers for that year were: Leverett Saltonstall, president; Ebenezer Shillaber, secretary; Ebenezer Mosely, Jacob Gerrish, John G. King, Rufus Choate and Stephen Minot, standing committee. This association existed but a few years.

The present Essex Bar Association was formed in 1856, and has been continued without intermission to the present time. It has proved beneficial to the Bar.

The occasional meetings for business, and the annual gathering and festival provided for in the earliest by-laws, have brought the members into kindly intercourse with each other, and have tended to allay any asperities which may have been engendered.

The Association has also been very useful in the exercise of its disciplinary powers, which has proved so efficient that for many years past but little enforcement has been required.

It has also performed an important service in the preparation of memorials of meritorious members of the Bar, upon their decease, to be presented for record to the Courts; and the duty has been faithfully performed, not only as a permanent memorial of the deceased, but as showing in the progress of time the advance made in the administration of the law. This duty was fully appreciated by the fathers of the Association, and the memorials prepared or approved by Messrs. Huntington, Abbott, Hazen, Endicott, Choate, Thompson and Ives, who have passed away, evidence the value in which they held the service, and should impress upon the Bar the solemn duty of continuing the custom. So important has it appeared to the Association that it has voted to gather up the different memorials and publish them in a volume, with brief mention of some of the more distinguished members of the Bar prior to the formation of the Association. This duty has been performed, and this volume is dedicated to the memory of the deceased members of the Essex Bar.

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JOHN G. KING.

RESOLUTIONS on the death of JOHN G. KING, adopted by the Essex Bar Association and ordered by the Court of Common Pleas to be entered upon record at September term, 1857.

"*Resolved*, that the Essex Bar Association have heard with deep regret of the decease of the Honorable John Glen King, one of the oldest members of their society, who has been identified with the profession of the law in Essex County for the last half century; that they avail themselves of this melancholy occasion to express their high regard for his integrity, his fidelity and his eminent professional merit, and that although most of those now engaged in the practice are by a long interval his juniors, yet young as well as old will unite in paying a sincere tribute of respect to the memory of one of the last representatives of that Essex Bar, which was so long and so widely known and honored.

Resolved, That the Bar are proud to feel that it is not merely in the path of the profession that their departed brother has been distinguished, but that in all the relations of public and private life the consent of his fellow citizens has awarded to his character the merit to which it was entitled, and that the numerous and responsible stations, which, through a long life, he has been called upon to occupy, all indicate the unlimited and unabated confidence which was reposed in him.

Resolved, That the president of the association be requested to present these resolutions to the Court at its next session and request that they be entered of record."

These resolutions were presented to the Superior Court, and it was ORDERED that said resolutions be entered on the records of the Court.

DANIEL A. WHITE. STEPHEN MINOT.

RESOLUTIONS on the death of DANIEL A. WHITE and of STEPHEN MINOT, adopted by the Essex Bar Association, and ordered by the Superior Court to be entered upon record April 16, 1861.

Resolved, That the Bar of the County of Essex, receive with feelings of unaffected sadness, the intelligence of the decease of the Honorable Daniel Appleton White, the oldest member of this association and who discharged for nearly forty years, with unequalled dignity and fidelity, the responsible duties of judge of probate for this county.

Resolved, That while we mourn over this sad intelligence, we yet render our devout thanks to the Almighty Disposer of events that our departed brother has been spared so much beyond the ordinary space of human life, in the full possession of his noble and brilliant faculties, to adorn the profession of his choice, and to shed the lustre of his intellect and character upon all the institutions and associations of his native county, and most especially for that serene old age, which, with all its refreshing and improving influences, has so fitly terminated a life well spent.

Resolved, That we gratefully record our appreciation of the fine intellectual and moral traits of our deceased brother, of that elegant and varied scholarship, and that thorough and exact learning of which a brilliant University career gave promise, and which the experience of so long a life did not disappoint, of his fidelity to his professional and judicial duties, of the services which he has rendered to the probate law, by his faithful administration and his published treatise, of the pure and simple course of his daily life, of the unswerving integrity, the exquisite religious sensibility, the large philanthropy and the unbounded and generous sympathy for all

around him, which ennobled his life, even to its extremest close ; and that although we cannot repine or murmur that such a life, so long and so useful, has been terminated in the fulness of time, we will cherish his memory with affectionate pride and strive to profit by the beneficent influence of his example.

Resolved, That the chairman of the committee be requested to present these resolutions to the Superior Court now in session, and also to the Supreme Judicial Court at its next term, and move that they be entered upon the records of said Courts, and that a copy of the same be transmitted to the family of the deceased.

Resolved, That in the death of the Honorable Stephen Minot of Haverhill, in the eighty-fifth year of his age, which occurred on the sixth inst., just one week following the departure from earth of the eminent man and magistrate, briefly commemorated in the foregoing resolutions, we have to lament the loss, while we desire to render all fitting honor to the memory of another respected magistrate, a useful and honored fellow citizen, and the oldest member of the Essex Bar. He was an Associate Justice of the Circuit Court of Common Pleas for the Middle circuit, from December term, 1811, to June term, 1821, inclusive, being the entire legal life of that Court. He was attorney for the Commonwealth for this county from 1824 to 1830, and he discharged the duties of both these offices with honor to himself and usefulness to the Commonwealth. He was thoroughly versed in the principles and practice of the common law, and this was fully illustrated both on the bench and at the bar. He was a man of genial humor, and in the latter and more leisure period of his life was much addicted to liberal studies. For thirty years past he has been almost wholly retired from the active duties of the profession, and has been but seldom seen in attendance on the courts. But his name and his praise have been known among us by tradition or by the recollections of a few of the elders of the bar. Enough is known of him and more than

enough, to make us desire to preserve on the records of the Court a brief tribute to the memory of this departed magistrate and brother, and to express our sympathies with the family of the deceased.

Resolved, That the chairman of the committee having in charge the resolutions hereto adopted, be requested to present this resolution, and to ask that the same may be entered of record, and a copy thereof transmitted to the family of the deceased.

April 16, 1861. The foregoing resolutions were presented to the Court by the Chairman of the committee of the Bar Association, and were responded to in a most fitting manner by the Court. The Court ordered the same to be entered at length on its records, that attested copies thereof be transmitted to the respective families of the deceased, and that before entering on the business of the term, in honor of the memory of the deceased, the Court will now adjourn to the 18th inst. (Thursday) at 9.30 A. M. and the Court was adjourned accordingly.

LONSON NASH.

RESOLVES on the death of LONSON NASH, adopted by the Essex Bar Association and ordered by the Superior Court to be entered of record, February, 1863.

At a special meeting of the Essex Bar Association held at the Court House in Salem, on Tuesday the tenth day of February, 1863, on occasion of the death of Lonson Nash, a member of this body, which occurred at Great Barrington on the first instant, the President in the chair, Dan Weed, in the absence of the clerk, was chosen secretary. The object of the meeting being stated by the chair, the following Resolutions, reported for the purpose, were unanimously adopted.

Resolved, That we have heard with deep sorrow of the death of the Honorable Lonson Nash, in the 83d year of his age, in a remote part of the Commonwealth, to which he retired a few years ago on leaving the practice of the law in the courts of this county, which he had followed for more than half a century with an interruption of some eight years. He came to this bar in 1807 and established himself in Gloucester and retired finally from the practice in 1860. He was an honorable, faithful and upright counsellor in the law, a gentleman of the old school in his manners, life and principles, an ornament to his profession in the integrity and purity of his character, modest and unassuming in all his deportment, universally respected in all public and private relations, honored as a citizen and man, and always an example of all that was excellent and of good report. He was early called into the service of the State and was elected to the Senate as early as 1812, as a member of the old Federal party, to which he was strongly attached while that party existed. He was elected a member of the House of Representatives from Gloucester in 1809. Contemporary in his professional life with Dane, Putnam, Prescott, Story, White, Andrews, Pick-

ering, Cummins, Saltonstall, Merrill, King, Mosely, Varnum, Minot, Clark and French, we of the present generation regarded him with peculiar respect and veneration as a true representative of the former times, as a genuine type of the old schools, and as the companion and friend of the now ancient worthies of this Bar, men of excellent report in their day and fit to be commemorated and honored at all times. We parted from him in all affectionate respect, when he finally retired from among us, after this long life of honored and useful professional services, to spend his few remaining years in the scenes of his childhood and the home of his fathers, in the assured Christian hope of a better life.

We desire by these proceedings to manifest all proper respect for his memory and character, and to this end we request the District Attorney to present them to the Court and ask that they may be entered of record in perpetual remembrance of our respect and regard for the person, life and character of our deceased friend and brother.

Voted, That these proceedings be entered at length in our records.

JAMES H. DUNCAN.

RESOLUTIONS on the death of JAMES HENRY DUNCAN, adopted by the Essex Bar Association and ordered by the Superior Court to be entered of record at March term, 1869.

Resolved, That we desire to express, and put on record, our respect for the memory and character of the Honorable James H. Duncan, whose recent death was so sincerely and deeply lamented in the particular community where he was born and lived, as well as by the public at large. Mr. Duncan entered on the practice of the law in the Courts of this county more than fifty years ago, after a thorough preparation, according to the usages of that day, partly in the office of the late Leverett Saltonstall, so distinguished in his generation, and his kinsman and friend. He pursued his profession here for many years with marked fidelity and success, always trusted and respected by his brethren, until, having served his state honorably and usefully in both branches of the Legislature, he was called by the general voice of his fellow-citizens into the public councils of the country, now more than twenty years ago, since which time he has withdrawn himself wholly from the practice of the profession, and his attendance on the Courts. Of late years he has been known as a lawyer to much the largest portion now in the practice at this bar, only by the traditions of the elders, among whom, as well as in the Courts, he had obtained, and always held a good report.

Resolved, That these resolutions be entered at length on our own records, and that the President be requested to present to the Court an attested copy, and to ask that it be entered of record therein, in perpetual remembrance, and that in token of our sympathy with the family of the deceased, the clerk be directed to transmit them copies of these proceedings. The foregoing resolutions were adopted by the Essex Bar Association, and presented to the Court, and it was ORDERED that said resolutions be entered on the records of the Court.

RUFUS CHOATE.

RUFUS CHOATE was born in Essex, in this county, October 1st, 1799. He was graduated from Dartmouth College in 1820; and studied at the Harvard Law School, and with William Wirt, United States Attorney General, and was admitted to the Bar in this county in 1823. He commenced the practice of his profession in the part of Danvers which is now Peabody, where he remained some five years; whilst there he represented the town of Danvers in the House of Representatives two years, and the county in the Senate one year.

In 1828 he removed to Salem, where he practised in his profession until 1833, when he removed to Boston, where he practised until his death.

Whilst in Salem he was twice elected to the United States House of Representatives. In 1841 he was elected as successor to Daniel Webster in the United States Senate.

In June, 1859, he, being in poor health, embarked for England, hoping the change of climate and scene would be of benefit to him, but he became so ill that he was obliged to leave the steamer at Halifax, where he remained until his death, July 13, 1859. Upon his death the Bar of Boston held a meeting in memoriam, which was addressed by Messrs. Benjamin R. Curtis, Charles G. Loring, Richard H. Dana, and other distinguished members of the Suffolk Bar. No public proceedings were had in this county upon his death.

It has seemed to us to be eminently fitting that, in this volume, a tribute should be rendered to this remarkable man, who was born in this county, which was his home for the first thirty years of his life, and who was a member of the Essex Bar for ten years; and we give the remarks of Mr. Dana at the meeting in Boston, as follows:—

"MR. CHAIRMAN:—By your courtesy, and the courtesy of this Bar, which never fails, I occupy an earlier moment than

I should otherwise be entitled to; for the reason that in a few hours I shall be called upon to take a long leave of the Bar and of my home. I cannot do that, sir—I cannot do that, without rising to say one word of what I know and feel upon this sad loss.

"The pressure which has been upon me in the last few days of my remaining here has prevented my making that kind of preparation which the example of him whom we commemorate requires of every man about to address a fit audience upon a great subject. I can only speak right on what I do feel and know.

"'The wine of life is drawn.' The 'golden bowl is broken.' The age of miracles has passed. The day of inspiration is over. The Great Conqueror, unseen and irresistible, has broken into our temple and has carried off the vessels of gold, the vessels of silver, the precious stones, the jewels, and the ivory; and, like the priests of the Temple of Jerusalem, after the invasion from Babylon, we must content ourselves, as we can, with vessels of wood and of stone and of iron.

"With such broken phrases as these, Mr. Chairman, perhaps not altogether just to the living, we endeavor to express the emotions natural to this hour of our bereavement. Talent, industry, eloquence and learning there are still, and always will be, at the bar of Boston. But if I say that the age of miracles has passed, that the day of inspiration is over,—if I cannot realize that in this place where we now are the cloth of gold was spread, and a banquet set fit for the gods,—I know, sir, you will excuse it. Any one who has lived with him and now survives him will excuse it,—any one who, like the youth in Wordsworth's ode,

> "by the vision splendid,
> Is on his way attended,
> At length . . . perceives it die away,
> And fade into the light of common day."

"Sir, I speak for myself,—I have no right to speak for others,—but I can truly say, without any exaggeration, taking for the moment a simile from that element which he

loved as much as I love it, though it rose against his life at last,—that in his presence I felt like the master of a small coasting vessel, that hugs the shore, that has run up under the lee to speak a great homeward-bound Indiaman, freighted with silks and precious stones, spices and costly fabrics, with sky-sails and studding sails spread to the breeze, with the nation's flag at her masthead, navigated by the mysterious science of the fixed stars, and not unprepared with weapons of defence, her decks peopled with men in strange costumes, speaking of strange climes and distant lands.

"All loved him, especially the young. He never asserted himself, or claimed precedence, to the injury of any man's feelings. Who ever knew him to lose temper? Who ever heard from him an unkind word? And this is all the more strange from the fact of his great sensitiveness of temperament.

"His splendid talents as an orator need no commendation here. The world knows so much. The world knows perfectly well that juries after juries have returned their verdicts for Mr. Choate's clients, and the Court has entered them upon the issues. The world knows how he electrified vast audiences in his more popular addresses; but, sir, the world has not known, though it knows better now than it did,—and the testimony of those better competent than I am will teach it,—that his power here rested not merely nor chiefly upon his eloquence, but rested principally upon his philosophic and dialectic power. He was the greatest master of logic we had amongst us. No man detected a fallacy so quickly, or exposed it so felicitously as he, whether in scientific terms to the bench, or popularly to the jury; and who could play with a fallacy as he could? Ask those venerated men who compose our highest tribunal, with whom all mere rhetoric is worse than wasted when their minds are bent to the single purpose of arriving at the true results of their science,—ask them wherein lay the greatest power of Rufus Choate, and they will tell you it lay in his philosophy, his logic, and his learning.

"He was, Sir, in two words, a unique creation. He was a strange product of New England. Benjamin Franklin, John Adams, Samuel Dexter, Daniel Webster, and Jeremiah Mason seem to be the natural products of the soil; but to me this great man always seemed as not having an origin here in New England; but as if, by the side of our wooden buildings, or by the side of our time enduring granite, there had risen, like an exhalation, some oriental structure, with the domes and glittering minarets of the Eastern world. Yet this beautiful fabric, so aerial, was founded upon a rock. We know he digged his foundation deep, and laid it strong and sure.

"I wished to say a word as to his wit, but time would fail me to speak of everything. Yet without reference to that, all I may say would be too incomplete. His wit did not raise an uproarious laugh, but created an inward and home-felt delight, and took up its abode in your memory. The casual word, the unexpected answer at the corner of the street, the remark whispered over the back of his chair while the docket was calling, you repeated to the next man you met, and he to the next, and in a few days it became the anecdote of the town. When as lawyers we met together, in tedious hours, and sought to entertain ourselves, we found we did better with anecdotes of Mr. Choate than on our own original resources.

"Besides his eloquence, his logic power, and his wit, he possessed deep and varied learning. His learning was accurate, too. He could put his hand on any Massachusetts case as quick as the judge who decided it.

"But if I were asked to name that which I regard as his characteristic,—that in which he differed from other learned, logical and eloquent men of great eminence,—I should say it was his aesthetic nature.

"Even under the excitement of this moment, I should not compare his mind in the point of mere force of understanding (and, indeed, he would not have tolerated such a comparison) with Daniel Webster; and yet I think we have a right to say

that, in his aesthetic nature, he possessed something to which the minds of Franklin, Adams, Dexter, Mason, and Webster, were strangers.

"But I ask pardon of the bar. I am not desirous of making these comparisons.

"I need not say, Sir, Rufus Choate was a great lawyer, a great jurist, a great publicist, but more than all that—and I speak of that which I know—his nature partook strongly of the poetic element. It was not something which he could put on or off, but it was born with him—I will not say died with him, but it translated with him.

"Shakspeare was his great author. I would have defied even the Shakspeare scholar to refer to any passage of Shakspeare that Mr. Choate would not have recognized instantly. Next to Shakspeare, I think I have a right to say he thought that he owed more to Wordsworth than to any other poet. He studied him before it was the fashion, and before his high position had been vindicated.

"Then he was, of course, a great student of Milton, and after that, I think that those poets who gained the affections of his youth, and wrote when he was young,—Byron, Scott, Coleridge, Southey,—had his affections chiefly; though of course, he read and valued and studied Spenser and Dryden, and, as a satirist and a maker of epigrams, Pope. This love of poetry with him was genuine and true. He read and studied always, not with a view to make ornaments for his speeches, but because his nature drew him to it. We all know he was a fine Greek and Latin scholar; was accurate; he never made a false quantity. Who ever detected him in a misquotation? He once told me he never allowed a day to go by that he did not write out a translation from some Greek or Latin author. This was one of the means by which he gained his affluence of language. Of Cicero he was a frequent student, particularly of his ethical and philosophical writings. But Greek was his favorite tongue.

"One word more, Sir. It is not so generally known, I suppose, of Mr. Choate, that, certainly during the last ten

years of his life, he gave much of his thoughts to those noble and elevating problems which relate to the nature and destiny of man, to the nature of God, to the great hereafter; recognizing Sir, that great truth—so beautifully expressed in his favorite tongue—in sacred writ, . . . things not seen are eternal. He studied not mere psychology; he knew well the great schools of philosophy; he knew well their characteristics, and read their leading men. I suspect he was the first man in this community who read Sir William Hamilton, and Mansel's work on "The Limits of Religious Thought;" and I doubt if the chairs of Harvard and Yale were more familiar with the English and German minds, and their views on these great problems, than Mr. Choate.

"He carried his study even into technical theology. He knew its genius and spirit better than many divines. He knew in detail the great dogmas of St. Augustine; and he studied and knew John Calvin and Luther. He knew the great principals which lie at the foundation of Catholic theology and institutions, and the theology of the Evangelical school; and he knew and studied the rationalistic writings of the Germans, and was familiar with their theories and characteristics.

"With all those persons whom he met and who he felt, with reasonable confidence, had sufficent elevation to value these subjects, he conversed upon them freely. But beyond this—as to his opinions, his results—I have no right to speak. I only wished to allude to a few of the more prominent of his characteristics; and it is peculiarly gratifying to remember, at this moment, that he had the elevation of mind so to lay hold upon the greatest of all subjects.

"I meant to have spoken of his studies of the English prose writers, among whom Bacon and Burke had his preference. But he read them all, and loved to read them all; from the scholastic stateliness of Milton, warring for the right of expressing thoughts for all ages, to the simplicity of Cowper's Letters.

"But all this has gone from us. We are never to see him

again in the places that knew him. To think that he, of all men, who loved his home so, should have died among strangers. That he, of all men, should have died under a foreign flag. I can go no further. I can only call upon all to bear witness now, and to the next generation, that he stood before us an example of eminence in science, in erudition, in genius, in taste, in honor, in generosity, in humanity, —in every liberal sentiment and every liberal accomplishment."

NATHANIEL J. LORD.

In the Superior Court, in session at Salem, CHIEF JUSTICE BRIGHAM presiding, on Friday, July 2, 1869, the trial of causes was suspended, at the request of the Committee of the Essex Bar Association, that the action of the Association on the death of MR. NATHANIEL J. LORD might be presented to the court. There was a full attendance of the Bar, and of the friends of Mr. Lord.

Hon. ALFRED A. ABBOTT, in behalf of the committee, presented and read the following Memorial, as directed by the vote of the Association:—

MAY IT PLEASE YOUR HONOR:—Nathaniel J. Lord, Esquire, one of the oldest members of this Bar, and for many years its most distinguished ornament, departed this life on the eighteenth day of June last.

At a meeting of the Essex Bar Association, held on the 21st ultimo, to take appropriate action on this sad event, a Committee was appointed to prepare and report some suitable expression of the sentiments of the Bar, to be made matter of enduring record. That Committee, in attending to the duty assigned them, concluded, instead of reporting a series of resolutions, to submit a brief and simple sketch of their deceased brother, as a more fitting form of memorial,—and this humble and sincere tribute of appreciation and regard, having been, at an adjourned meeting of the Association, accepted and approved, is now, by its order, and at the earliest proper opportunity, respectfully presented to the court.

Mr. Lord was born at Ipswich, a former shire-town of this county, on the 28th day of October, 1805. He was the oldest son of Nathaniel Lord, Esquire, for thirty-six years the Register of Probate for Essex County,—a public officer of singular capacity and fidelity, and a man whose sterling traits

of character, intellectual and moral, won the fullest confidence of the community, and were a choice and dearly prized legacy to his children.

Mr. Lord was fitted for college at Phillips Academy, Andover, entered Harvard College in 1821, and was graduated in course in 1825. He began his professional studies at the Northampton Law School, under the tuition of Judge Howe, now best known to lawyers by his Book of Practice, and of Prof. Ashmun, and completed his preparatory course in the office of the Hon. Leverett Saltonstall of Salem. He was admitted to practice as an Attorney in the Court of Common Pleas in September, 1828, as an Attorney in the Supreme Judicial Court at the November Term, in 1830, and afterwards as a counsellor, in 1832. Upon coming to the Bar Mr. Lord opened an office in Salem, but after a few months he formed a business connection with Mr. Saltonstall, with whom he continued as a partner until 1835. Although by this association he was for a time kept comparatively in the background, as in all cases he properly acted as Mr. Saltonstall's junior, yet it could not have been but of the highest advantage. A generation has grown up since Mr. Saltonstall led the Essex Bar. But many yet survive who recall, not without a thrill of admiring recollection, the manly form, the benignant face, the graceful manners, the persuasive accents, the forcible logic, the high culture, the moral power, the winning yet commanding qualities of heart and head, which combined to make Leverett Saltonstall at once the trusted counsellor and the consummate advocate, as well as the endeared friend, the favorite citizen, and the accomplished statesman.

In 1835, upon the dissolution of his partnership with Mr. Saltonstall, Mr. Lord commenced business on his own account, and, at once, from comparative obscurity, he sprung into full practice and established reputation, and from this time on he stood in the very front rank of the profession, and soon, and so long as he continued in active duty, was the acknowledged leader of our Bar. He had, at the start,

to cope not only with Mr. Choate and Mr. Saltonstall—the former of whom, always and everywhere *facile princeps*, had not yet removed to Boston, and the latter of whom still occasionally argued causes and swayed and led captive juries by his genial eloquence—but with Mr. Merrill and Mr. King, distinguished for their scholarship and abstruse learning; with the late Judge Ward, so acute, skilful, ingenious and versatile; and with Mr. Caleb Cushing, Mr. Robert Rantoul, Jr., Mr. Moseley, Mr. Huntington, Mr. Stickney, and others yet active at the Bar and on the Bench, whom propriety forbids us to name, but all of deserved eminence and great ability. But he stood his ground manfully, and fairly vindicated his claim to the first honors and highest emoluments of the profession, and, until he abandoned practice, he was retained as leading counsel, upon one side or the other, in every case of considerable importance tried in our courts. Indeed, the repute of his learning and ability led to his being frequently called to aid in the conduct of cases before other and remote tribunals, but he almost invariably refused such engagements where the interests of his home clients were not at stake, preferring to spend his strength and win his laurels in his own native county.

Mr. Lord was endowed by nature with a vigorous intellect, quick perceptive faculties, large powers of observation, a remarkably retentive memory, great patience for labor, a ready wit, an even temper, and with all, a robust good sense which balanced all his powers and insured success to all his efforts. Thus naturally gifted, he sharpened every native endowment by careful, systematic, and constant study and labor. He was thoroughly grounded in the principles of the law, and of its practice. He studied at a time when a man had to study to be a lawyer, when *the practice* of the law, as well as its principles, was a science which must be learned. Several large manuscript volumes of common-place books yet remaining in his library attest the system and severity of that early application and discipline which, in after years, bore such rich fruits.

To exact and comprehensive legal acquirements Mr. Lord brought the aid and ornament of an enlarged and generous culture. He was well versed in polite letters and science, had ever at command resources and displayed the advantages of a careful training in the classics, and was familiar with, and never ceased to take delight in, the masterpieces of English literature.

Mr. Lord's manners and bearing, and mode of conducting business at the Bar, were of the best school, and unexceptionable. Uniformly respectful to the court, and courteous in his demeanor, not only to the Bench, but to his brethren of every degree; graceful and dignified in person and address; clear, concise and impressive in argument and appeal; in his treatment of witnesses civil and urbane, never overbearing or harsh, and yet with consummate art, exposing prejudice, unmasking falsehood, and establishing truth, with a keen sense of professional honor and integrity, and ever alive to the obligations of the law and its ministers, as well as to the interest of his clients, he may well be held up as a model for the guidance and imitation of those who succeed him.

Should it be asked what characteristics of Mr. Lord, as a practising lawyer, most attracted the attention of his contemporaries, the question may be answered by particularizing two respects, one intellectual and the other moral, in which he was marked. As to the first, it may be said that all his professional efforts were singularly neat, finished, elegant and complete. He was in the habit of making copious minutes of evidence, made very full briefs, went through the most careful preparation, and though polished and ornate, was yet concise, compact, and comparatively brief,—but whether arguing a grave question before the full Bench of the Supreme Court, or addressing a Jury in a case of the largest moment, or trying a trivial cause in the office of a country Justice, he always evinced the same marks of anxious care, of study, of elaboration, was always *teres atque rotundus*,—and when his work was ended, it was felt that there had been congruity, proportion, completion, and that nothing was left to be said or done.

The second prominent feature was one already glanced at, his urbane deportment, his high sense of professional propriety, his liberality in pratice, and above all his kind consideration for, and generous treatment of, his juniors and inferiors at the Bar. His eminent position and acknowledged superiority gave added grace to this amiable trait, which now peculiarly endears him in many memories.

Like most lawyers who have had the greatest success in active forensic practice, Mr. Lord has left behind him no work to illustrate his talents and learning, nothing to perpetuate his name and fame. He was never in what is called public life, and never held public office. He had decided views upon political questions, and to the last adhered tenaciously to the principles which he espoused in early manhood,—but he did not belong to the popular and prevailing side, and so was debarred the opportunity of adorning any post of civic honor and trust,—and it may well be doubted if he would willingly have assumed any such position had it been in his way. His whole heart was in his profession, here was his pride and ambition, here his love and joy, here his aspirations and triumphs. There is, perhaps, one enduring work with which his name will be associated, but whether he would have regarded it as an appropriate memorial may justly be questioned. With Judge Curtis and Chief Justice Chapman, he was of the Commission appointed by the Executive of the Commonwealth to prepare the present Practice Art. Although in the main the result of their labors has met the approval of the profession, and now has the sanction of usage and time, yet, as has been well known to his friends, under the construction given to it by the courts, this act has failed fairly to realize Mr. Lord's intentions, as well as those of at least one of his associates. Conservative, while progressive, it was his purpose that the act should prevent double pleading, as much as did the old system of special pleading,—that there was to be "yes" or "no" to every allegation, and not a denial of an allegation, and, in case of that allegation being proved, an alternative answer. So that this only surviving professional work, by

which he will hereafter be known, can hardly be regarded as a faithful embodiment of his ideas of a true system of legal practice, or as a truthful monument to his name. Hereafter, like so many of our ablest and best who have gone before him, he must survive in the hearts of his friends who loved him so fondly and whom he loved so well, in the cherished traditions of the Bar, in the respectful memory of the community in which he lived and labored, and in the record of a useful, honorable, and upright life.

In the autumn of 1853, in the midst of his work, and while apparently in the full vigor of health, Mr. Lord was suddenly prostrated by disease. Under medical advice he went abroad, in the hope that change of air and scene, and rest from labor, would restore his drooping energies. He returned, much improved, but still unfit for active duty. The bow could not again be bent. Wisely, though reluctantly, he withdrew from the field, and sought in retirement the repose he had so dearly earned. From that time to the day of his death, although suffering from a complication of ills which would have borne down one of less fortitude and patience, he retained through all full possession of his mental faculties, preserved an even temper and a cheerful spirit, enjoyed life and the companionship of kindred and friends, kept informed and was an attentive observer of current events, and, especially in all that related to the courts and his old associates and successors at the Bar, evinced the liveliest interest and the deepest concern. And so, as the last hours drew on, calm and resigned, he awaited the end in full religious faith and hope, and in his death, as in his life, left to his brethren a bright example and a precious memory.

And now, may it please your Honor, in behalf of the Committee, and in behalf of the Bar Association, whose organ they are, I respectfully move your Honor that this humble tribute of respect and affection to our deseased brother be placed upon the records of the court.

The motion of Mr. Abbott was seconded by Wm. C. Endicott, Esq., as follows:—

MAY IT PLEASE YOUR HONOR:—I have already in this place on another occasion, endeavored to express my appreciation of the character, abilities and acquirements of Mr. Lord, and to pay a heartfelt tribute of respect to his memory. I do not desire to say more now. Certainly I can add nothing to the touching and truthful memorial prepared by Mr. Abbott and here presented to the Court. It gives us a recital of his life and labors, an analysis of his intellectual powers and various talents, a portrait of the man himself, which we can all dwell upon with pleasure, and which will inform those who come after us what manner of man he was. It meets with the full approval of the Bar; and, in behalf of the Bar, I second the motion made by Mr. Abbott.

Hon. Asahel Huntington then spoke as follows:—

MAY IT PLEASE THE COURT:—I desire to express my full and most cordial concurrence in these proceedings. The brief and truly appreciative sketch of the life, the personal and professional character and standing of our brother Lord, which our Association here presents to the court, and desires to have entered on its records in perpetual remembrance, as our willing tribute, and deliberate judgment, will not be held or regarded as exaggerated or overdrawn, in any quarter where he was known and justly estimated. He is presented here as he was known to the courts and the Bar, to his near and intimate friends, and to the public at large. All his active business life was mainly in the courts, and in the faithful and laborious discharge of the duties of his profession. His aims and ambitions were strictly professional, and he relied upon himself for success and advancement. The places and persons which knew him best and most, outside of the circle of kindred and personal friends, were courts and clients, juries and witnesses, and his associates at the Bar.

I have known Mr. Lord from his first entrance on professional life, and through all his subsequent and distinguished career. I recollect well the impression he made at the very commencement. He showed at first, and in the start, those

traits, qualities, and signs, which clearly indicate to all observers what his course was to be, and what rank he would be likely to occupy in his profession. I remember an early cause in which he was retained, and which came on for trial in the old Court of Common Pleas at Ipswich. It must have been within a year or two after his admission to the Bar. It was a cause of some public interest, and the court-room was crowded. He was there in his native town, surrounded by his friends and kindred. He was junior counsel and had the opening, but whether for plaintiff or defendant, it has now escaped me; but this I know and remember, that he showed a thorough mastery of his case, as he proceeded from one point to another, in clear and logical order, and in that terse and strong style of expression, for which he was afterwards so much distinguished; and showing also, what has often been remarked, that sometimes the right and skilful opening of a cause may be as important as the close and summing up, and furnish quite as much scope for discrimination, judgment and real ability. At any rate, such was the force, strength, and completeness of this particular performance, that I well remember a brother lawyer, a few years the senior of Mr. Lord, and even then the acknowledged head of the Bar, in the general estimate of the profession and of the public, and a native also of the old town of Ipswich, who had been a careful listener, broke out at the conclusion with some hearty expression of approval, in his own peculiar and inimitable manner. I refer to this particular case only to show what sort of impression our friend and brother made, when he first entered on the contests of the profession. His whole life afterwards was full of just such exhibitions of intellectual power, only of wider scope and breadth, as he matured in strength and experience, in his full manhood. And this is known and read of all men who have been conversant with our courts.

Mr. Lord has had long experience of sickness and disease. How he bore himself in this great and severe trial—how uncomplaining and unrepining always; how cheerful and interested in passing events, or in whatever concerned the welfare

of his friends; in what a cordial manner he always received his friends, and how warmly he sought to keep up the communion of his friendships—who that has visited him in that chamber of sickness, during those many and long years, has not seen and admired? It happened to me to visit him, not many days before his death, and to report to him, as the almoner of his bounty, how gratefully it had been received, and how it touched the heart and feelings of an old and esteemed friend. He referred, in the kindest manner, to the early scenes which gave rise to this friendship, and to his happiness in being able thus to manifest his sympathy and regard.

Mr. Lord's death, though he had evidently been declining for some weeks, was at the last sudden. He had invited, several weeks ago, a venerable and beloved relative to dine with him today; and this day that relative enters on his ninetieth year (the special occasion of the invitation), and is here present, to witness these proceedings in honor of the memory of his nephew. In this coincidence, alike striking and affecting, and in these events, we see how the Divine Will shapes our ends and determines our bounds.

In addition to the motion already made, and as an amendment thereto, I move that an attested copy of these proceedings, in token of our sympathy, be sent to the family of Mr. Lord, under the order of the court.

Chief Justice Brigham then addressed the Bar as follows:—

Gentlemen of the Bar:—The memorial tribute of the Essex Bar, in honor of their deceased brother, Nathaniel J. Lord, will be placed among the records of this court, as a part of the history of the administration of justice in this county, and an attested copy of these proceedings will be sent to his family in accordance with the motion just made.

Mr. Lord, although in the full ripeness of his faculties as a lawyer, ten years ago—when this court was organized—was so disabled, by extreme physical infirmity, that he could not appear before its justices, and thus they have lost the opportunity of recognizing, in person, the various professional accomplishments which he was reputed to possess in an emi-

nent degree. Throughout the Commonwealth he was known as the leading counsel of this county, and as such, worthily qualified, by learning, tact and skill in the trial of causes, eloquence, and "fidelity as well to the courts as to his clients," to succeed those lawyers, of a preceding generation, who had left the leadership of the Essex, to become the leaders of the Massachusetts Bar.

The professional lives of lawyers, although constantly influential in the events which constitute the most important material of history, rarely receive from analists an adequate acknowledgment of their significance. A lawyer, in conducting matters of litigation, is often the first to suggest questions of legal principle, so original in their nature as to fairly deserve the title of discoveries; he may debate such questions with so abundant learning, and so large ability, that through him principally, if not solely, may be maintained and established great principles of law, which will fundamentally affect the most valued municipal, political, and religious institutions; and the only record of his impressive labor will be found in a complimentary phrase in a newspaper, a line in the books of "Reports of Cases," or the law pleadings to which he has affixed his name. After his professional career is finished, perhaps the lawyers of his own, and of the next following generation, will recite one to another anecdotes of his professional and personal eccentricities, the pleasantries by which he enlivened the rigors, or the audacity by which he encountered the exigences of a lawsuit; but the character thus preserved and transmitted by tradition will usually be more scandalous than just as to the man and his vocation, and demean the nobler attributes of both. Lawyers who, during the years ordinarily allotted to man for effective work, have manfully accepted the vicissitudes, and uprightly won the distinctions of their profession; sparing themselves none of its toils, and contenting themselves with its honors, although conscious that they will be undeservedly ephemeral; who in every function of that profession have been altogether faithful and excellent, are left to rely

upon their brethren, who have been familiar with their lives and survive them, to declare and perpetuate their testimony of the scope, influence, worth and elevation of those lives.

Considerations such as these make it a grateful service for a Judge to join his brethren at the Bar in a fraternal effort to save to their profession and to the State fitting memorials of a lawyer, who, during twenty-five years' exercise of his office, as an attorney and counsellor in all the courts, has justified the felicitous and discriminating sketch of his professional career, which introduced these proceedings.

The court then adjourned.

JEREMIAH C. STICKNEY.

At a meeting of the Essex Bar Association held September 7, 1869, Messrs. Thomas B. Newhall, Alfred Kittredge, Asahel Huntington, Daniel Saunders Jr. and George Wheatland were chosen a committee to prepare a memorial on the death of JEREMIAH C. STICKNEY, to be presented to the Superior Court.

MEMORIAL.

In the Superior Court at Sepember term, 1869, MR. HUNTINGTON presented the following memorial, which was ordered to be entered of record.

The Essex Bar Association desires to present to the Court here some memorial to be entered on its records, of the life and character of the late Jeremiah Chaplin Stickney, one of the oldest and most respected members of this Bar. He was born in Salem on the sixth day of January, 1805, was graduated at Harvard College in the class of 1824, and afterwards studied law for the full term of three years, in the office and under the tuition of the late Judge Cummins, one of the most distinguished and learned practitioners of this Bar at that period. He was admitted an attorney of the Court of Common Pleas, at the September term, 1827, an attorney of the Supreme Judicial Court, at the November term, 1829, and a Counsellor at the November term, 1831. He commenced the practice of his profession in the town of Lynn, and prosecuted it there, with great honor, integrity and success for more than forty years. He has been withdrawn of late from his attendance on the Courts, on account of the condition of his health but he has been for most of the time, with occasional interruptions a diligent and laborious worker, in his office, at home; and has conducted a large professional business. His clients

were always well served, and they adhered to him with great constancy, in sickness and in health. He was a thoroughly trained lawyer was well furnished and grounded in the principles of the common law, and was familiar with the practice and precedents of the Courts. Such has been his career in his profession, such his life long integrity of character, and such his marked ability in the discharge of all trusts committed to him, whether in or out of his profession, that he always commanded and enjoyed, in very large measure, the confidence and respect of the Courts, of the profession, and of the public at large.

He was possessed of the most genial and kindly feelings, greatly endeared to his more intimate friends, and was an example of all that was civil, courteous, considerate, and of good report, in the various relations of life. We may well regard Mr. Stickney as one of our number, who, in the course of an unusually long professional life, has brought no discredit on this Bar, but by his high character and ability, his urbane manners and deportment, has done very much to give it that consideration it enjoys in this community. In the dispensation of a wise Providence the time had come for him to leave these scenes of earth, and the places which knew him here, are to know him no more. He died peacefully in his own home, surrounded by his family and friends, after a short sickness, on the third day of August last. Thus has passed away from our sight, one of our elder brethren, long and honorably known to the Courts, whose struggles and ambitions here are now ended. One who has labored faithfully and truly in his day and generation, and of good report always as a lawyer, a citizen and a man. We will cherish his memory and desire that this simple tribute be entered of record in this Court, in perpetual remembrance of our departed friend and brother.

Resolved, That a copy of these proceedings be presented to the Court by the president of the association, with the re-

quest that the same be entered of record therein, and in expression of our sympathy, that a copy thereof be sent to the family of Mr. Stickney, by direction of the Court.

The foregoing proceedings were presented to the Court, and it was ordered that the same be entered of record, and a copy sent to the family of Mr. Stickney.

ASAHEL HUNTINGTON.

On Monday, Sept. 19th, 1870, in the Superior Court, then in session in Salem, Judge PUTNAM presiding, at three P. M., the cause on trial was suspended that the proceedings of the Bar might be presented to the Court. Notice had been previously given, and there was a large attendance of the Bar, and many citizens and friends of Mr. Huntington were present.

MR. ALFRED A. ABBOTT then read the following

MEMORIAL.

MAY IT PLEASE YOUR HONOR:—The HON. ASAHEL HUNTINGTON, one of the oldest members of the Essex Bar, and, at the time of his decease, its senior member in active professional labor, departed this life on Monday, the 5th instant, at the age of three score and twelve years.

On the day following, the 6th instant, at the coming in of the Court for the present term, at Newburyport, a meeting of the Essex Bar Association was held, and a committee appointed to embody in suitable form the sentiments of the members of the Bar, upon the death of their distinguished brother and friend; and the action of that committee having been approved and adopted by the Association, is now, by its order, respectfully presented to the Court, that the same may be entered upon its records, there to testify to those who shall come after them, the respect, veneration and love, with which his brethren cherished the memory of the lamented dead.

Mr. Huntington was born at Topsfield in this county, July 23d, 1798. He was the son of the Rev. Asahel Huntington, the congregational minister of that town, a man of the old New England type, the influence of whose sterling traits and wise counsels did much to mould the character and shape the life of his distinguished son. He was fitted for College at Phillips Academy, Andover, graduated in course at Yale, in

1819, and pursued the study of the law in the offices of Mr. Scott, of Newburyport, and Judge Cummins, of Salem. He was admitted to practice in the Court of Common Pleas, at the March Term, 1824 (having spent a portion of his time after leaving college, in teaching), was made an Attorney of the Supreme Judicial Court, at the November Term, 1826, and two years thereafter became a Counsellor. Upon his first coming to the Bar, he commenced business in Salem (where he remained through his whole life), and at once entered upon a professional career, busy, eventful, useful and honored, from the first to last.

In 1830, Mr. Huntington had so established his position and vindicated his claims to preferment, that he was appointed County Attorney, subsequently District Attorney (his field embracing Essex and a part of Middlesex), and afterwards Attorney for the Eastern District, and this post of prosecuting officer he filled for nearly twenty years. To many of the present generation of lawyers his discharge of these official duties is matter of tradition. But they have heard from his earlier cotemporaries, of the zeal, the energy, the perseverance, the fearlessness and fidelity, the marked ability and the moral force with which he vindicated the majesty of the law and pursued and punished crime. It was in this position that Mr. Huntington won a reputation which was not confined to his native county, but gained a name and fame throughout the Commonwealth. He had to meet and contend with strong opponents, and was engaged in not a few cases which have become historic, but he shunned no encounter, and proved himself equal to every emergency. Mr. Choate, who came to the Bar in the same year with Mr. Huntington, and between whom and Mr. Huntington there existed an ardent friendship which was of lifelong duration, Mr. Saltonstall, Mr. Cushing, Mr. Rantoul, Mr. Nathaniel J. Lord, Mr. Ward, with many others of eminent ability and skill, some of whom have passed away, and others of whom yet survive to dignify the Bench or adorn the Bar, were the men whom our deceased friend encountered in forensic strife,

and always with credit and honor. In the noted Wyman trial he had to cope with Daniel Webster, and although the greatest lawyer of his age then exerted to the utmost his gigantic powers in defence of his client, the Government found in its Attorney an undaunted and worthy representative, who fairly divided the honors of the famous struggle.

Mr. Huntington's labors were by no means limited to the criminal side of the Court. He had an extensive general practice, and was retained in many of the more important civil causes of his day. He had always great and acknowledged strength with an Essex county jury. In the first place, he was emphatically an Essex county man. A native, proud of the old Shire, familiar with her historic days and names, knowing all her local traditions, and conversant with her men and business, heartily sustaining every movement and supporting every institution which promised to advance her prosperity and welfare, from youth to old age he was an embodiment of the average sentiment of Essex county, in morals, politics and religion, and peculiarly one of her representative men. Then, as a lawyer, he entered with his whole soul into whatever cause he espoused. Sanguine, impassioned, vehement, not so much versed in the knowledge of cases and the nice learning of the law, as well grounded in its general and fundamental principles and familiar with and skilled in its practice, with a homely but strong logic, a manly good sense and sound judgment, a large acquaintance with men and affairs, and a perseverance and tenacity of purpose which sometimes even verged on obstinacy, with a flow of good humor and at the same time a caustic wit and power of satire which could be made terribly severe, with a sort of sledge-hammor style of enforcing his points, and beating them into convictions in the minds of others, and all this set off by a bluff, cordial, and hearty manner, and aided by the moral effect of a private character above reproach, it is not strange that Mr. Huntington had the confidence alike of clients and juries, that he was an eminently successful practitioner and advocate, and that he always kept in the front rank of the very ablest of his cotemporaries.

In 1851, Mr. Huntington, waiving the pursuit of higher honors to which he might well have aspired, accepted the appointment of Clerk of the Courts for the County, and in that office remained to the day of his death. It was in this position that he was best known to, and will be more particularly remembered by, a majority of the present members of the Bar. There is no professional place more responsible than this, none the incumbent of which can do more for the convenience and comfort of his brethren, or for the orderly, reputable, and correct administration of justice. And, accordingly, the proper qualifications for it are exceptional and rare. To a sufficient degree of clerical accomplishments should be added an experimental knowledge of wide and varied practice, a full familiarity with the routine of business in the different courts, aptness, facility, promptness and method, critical accuracy and generous culture, patience and good temper, with decision and firmness, and, crowning all, that integrity of life, that affability of manners and dignity of presence and demeanor which can aid so much in securing respect for our judicial tribunals. To say that Mr. Huntington reached in full perfection this ideal standard, would be to attribute to him attainments and graces which were rarely if ever united in one man. But that he combined these qualifications to a remarkable extent, will be readily agreed. In no county of the Commonwealth have the proceedings in Court been conducted with more propriety, decorum and success than in Essex during his incumbency, and, upon the concurrent testimony of judges and lawyers, there is no county in which the Clerk has done more to systematize the practice, elevate the tone of manners and morals, and lend dignity and grace to the public administration of the law. Bench and Bar will deeply feel the irreparable loss occasioned by his death, but by his brethren of Essex will it be the most keenly appreciated. To the old he has been a trusted adviser; to the young a wise and faithful mentor; to all a counsellor and friend. He has held up and inculcated the highest standards of professional duty and honor. He has in his own example

furnished a striking model of professional conduct and courtesy. He has ever taken the liveliest interest in whatever concerned the good name or welfare of his associates. He has kept fresh the memories of the great lawyers of other days, and encouraged and inspired us by the recital of their achievements and successes. In an especial manner has he labored to preserve the decent observance of those mortuary tributes and rites which our fraternal relations so fully justify and demand. No worthy brother has passed away, whether from the obscure retirement of old age and infirmity, or from the arena of active duties, but that Mr. Huntington has been the first to recall and rehearse in charitable and affectionate words his merits, and to pay to his memory the last tokens of regard. And now that he too has gone, what less can we do than pause for a moment in our busy course, drop a loving tear upon his new-made grave, and while we recall with admiring recollection the strong mind, the resolute will, the kind heart, the eloquent speech, the genial presence, thank God for the blessing of his upright and useful life, testify to all men our appreciation of his worth, and here, within these walls where the echoes of his voice and the light of his countenance seem yet to linger, piously resolve to imitate his virtues and profit by his noble example.

Although what Mr. Huntington was, and what he did as a lawyer, is of more particular interest to his brethren, yet any sketch of him would be imcomplete which failed to make some mention of his life and labors outside of his profession. From early manhood he always took a prominent part in public affairs. His fellow citizens commanded his services in the State Legislature, in the Constitutional Convention of 1853, as Mayor of the city of his residence, as the head of various institutions and corporations—and there was no good cause or deserving enterprise of his day in which he did not warmly enlist and support with all his characteristic zeal and ability. Probably no man personally knew or was personally known to so many of the people of Essex county, especially of the older class, and by all he was held in respect, by mul-

titudes with strong personal regard. He was an active, earnest and loyal citizen, a kind and hospitable neighbor, a true and steadfast friend, an honest Christian gentleman. From the community of which he was thus the ornament and pride, from the fraternity who were bound to him by strong and tender ties, from the domestic circle upon whose sacred sorrows no stranger may intrude, he has been suddenly taken away, but yet fortunate in the opportunity of his death as of his life. Although he had passed the allotted years of man, no lingering disease had wasted his powers, no infirmities of mind or body indicated the ravages of age. His eye was not dim nor his natural force abated. His countenance still wore the freshness of youth, his step was elastic and firm, his whole bearing manly and vigorous, his spirits as generous and free, and his heart seemingly as young as in the prime of life. And so, leaving this bright image stamped ineffaceably upon the memories of all, his work on earth fully done, he passed from among us, and with faith in God and trust in a Redeemer, went to his eternal rest.

May it please your Honor, I now move, in behalf of the members of the Essex Bar Association, that this memorial of their departed friend and brother may be placed upon the records of the Court.

Wm. C. Endicott, Esq., president of the Essex Bar, then addressed the Court, and concluded by seconding, on behalf of the Bar, the motion of Mr. Abbott. Addresses were also made by the District Attorney Edgar J. Sherman, Esq., of Lawrence, Hon. J. C. Perkins, of Salem, Hon. Thomas B. Newhall, of Lynn, Henry Carter, Esq., of Haverhill, Hon. Wm. D. Northend, of Salem, Hon. Eben F. Stone, of Newburyport and Stephen B. Ives, Jr., Esq., of Salem.

It is seldom, on occasions like this, that so many desire to bear public testimony to the worth and virtues of the dead. The tributes, thus paid, were full of feeling, and bore witness, not only to the respect with which Mr. Huntington was regarded, but to the warm affections he inspired.

Judge Putnam then addressed the Bar as follows:

GENTLEMEN OF THE BAR OF ESSEX:—The death of one who occupied so prominent a position as our late friend and brother in this community—one so much beloved and esteemed by us all, and one so worthy of all the love and respect which were heaped upon him—is an event which may well call for more than a mere passing notice; and it is eminently proper that we should pause for a moment at least, in the midst of our professional pursuits, for the purpose of paying a fitting tribute to his memory.

I have listened, with feelings of the deepest sensibility to the words of affectionate remembrance and eulogy which have fallen from the lips of those of you who knew him and appreciated him so well. And while in behalf of the Superior Court, which I have the honor to represent, I tender to you my sincerest sympathy in the loss which you have sustained, I feel how inadequate will be any suggestions of my own to add to the impression which your own eloquent and touching words have left in the hearts of all whom I see around me. I deem it a privilege, however, to be permitted to add very briefly my own heartfelt tribute to the memory of the deceased.

Of Mr. Huntington as a lawyer, it does not become me to speak in this presence. You who were his associates at the Bar have just told us of the professional success and honor which crowned him, and it is enough for me to say that he has left behind him, as a lawyer, a reputation which any of us might envy. Nor do I propose to add one word to what has been so fitly said in your memorial, of the almost faultless manner in which he discharged his official duties as District Attorney and Clerk of the Courts. I propose only to allude, very briefly to some traits of his personal character, which seem to me worthy of notice.

My acquaintance with Mr. Huntington began when I first came to this county to discharge the duties of this Court, soon after its organization, in 1860. I can never forget the strong impression he at once made upon me, and how soon I came to esteem and love him. I was often with him during the

intermissions of the Court. His conversation at those times showed me how much he retained his love for his profession, and his interest in its welfare. He always closely watched the trial of cases of importance, and his remarks from time to time as to the management of them, indicated how keenly he still relished the conflicts of the Bar, and how jealous he still was for the professional honor and success of his former associates. He had an innate sense of justice which never suffered him to be silent when he saw that a wrong was intended to be done. He denounced with a special aversion and contempt, all meanness and hypocrisy of every kind. He saw, at once, through all shams and pretences, but in his criticisms there was nothing rancorous or malignant. His instincts were all kindly and genial. In simplicity and truthfulness of character he was almost childlike, and yet in firmness, courage and inflexibility of purpose, he was almost heroic. He was active and prominent in all the moral and benevolent enterprises of the day. He was a Christian without any bigotry, for he esteemed personal character as deeper than any creed.

In his social and private life he endeared himself to every one. His personal recollections of men and events of former days, particularly of those connected with this immediate vicinity, were abundant and always interesting. As a friend, he was ever true and faithful. His warm, genial, and sympathizing heart had a place for all and a kindly greeting for all. His tastes were all pure, simple and healthful.

He was always cheerful and hopeful. The great philosophic poet of England seems to me not inaptly to have characterized our friend in these words:

> "A man he seemed of cheerful yesterdays,
> And confident to-morrows; with a face
> Not worldly minded, for it bore too much
> Of Nature's impress—gayety and health,
> Freedom and hope; but keen withal and shrewd;
> His gestures, note,—and hark! his tones of voice
> Are all vivacious as his mien and looks."

And now, while the glory of the summer is waning, and all

nature is rendering up to us her rich and golden harvests, we have returned our friend, in the ripeness and maturity of his years, to the bosom of his mother earth. It is difficult to realize that he has actually passed away from us. We shall miss him from his accustomed seat. We shall behold no longer before us that benignant countenance, that noble presence—itself a perpetual benediction. We shall continue to press on in our hot pursuit of the shadows of life, while he has already grasped the realities. But we shall never forget his many virtues, for we have enshrined them in our hearts and affections.

Your memorial, gentlemen, seems to be but a fitting tribute to the character of our deceased friend, and I shall order it to be entered at length on the records of this Court.

JONATHAN COGSWELL PERKINS.

At a meeting of the Essex Bar Association, held December 19, 1877, Messrs. Northend, Abbott, Carter, Wheatland, Stone and Ives were chosen a committee to prepare a memorial of Mr. JONATHAN C. PERKINS, to be presented to the Court.

MEMORIAL.

In the Superior Court at Salem, December 28, 1877, CHIEF JUSTICE BRIGHAM presiding, Mr. WILLIAM D. NORTHEND for the Essex Bar Association presented the following memorial.

MAY IT PLEASE YOUR HONOR:—It is made my duty to report to the court the proceedings of the Essex Bar Association upon the decease of JONATHAN COGSWELL PERKINS, LL. D., one of the oldest and most distinguished members of the Essex Bar, who, after a very brief illness, departed this life on Wednesday morning, the 12th inst., at his residence on Lynde street, in this city, at the age of sixty-eight years.

A meeting of the Association was held on Tuesday, the 19th inst., and a committee was appointed to prepare a fitting tribute to the memory of our deceased brother. That committee reported, at an adjourned meeting, the following memorial, which was accepted with the direction that it should at an early day be presented to the court.

Judge Perkins was born November 21, 1809, in what is now the town of Essex, then a part of the town of Ipswich. He received the rudiments of his education at the public schools of the town, and was fitted for college at Phillips Academy, Andover. He entered Amherst College in 1828 and was graduated in 1832. He taught a district school at the Falls Village in Essex, in the winter of his Sophomore year. He was classmate, and for nearly the whole period of his college life, room-mate of Mr. Justice Lord of the Su-

preme Judicial Court. Among his classmates were also Hon. Henry Morris, LL. D., Prof. Samuel M. Hopkins, D. D., Hon. Lyman Gibbons, and others distinguished in the different walks of life.

In college he was the most laborious in his studies and punctual in the performance of all his duties. He devoted from thirteen to fifteen hours of each day to study and the recitation room, and by his industry well earned his appointment to deliver the Salutatory upon his graduation.

After completing his college course he commenced the study of the law with his fellow townsman, Hon. Rufus Choate, who was then in the practice of his profession in Salem. He remained in Mr. Choate's office about two years, and finished his course of study at the Dane Law School. He was admitted to practice as an attorney in the Court of Common Pleas at the September term of that Court in Newburyport in 1835, and in 1836, a change in the law having been made, he was admitted to practice as attorney and counsellor in all the courts of the Commonwealth. Immediately upon his admission to the Bar, he commenced his professional career in Salem, and from that time to the time of his appointment as Judge of the Court of Common Pleas, in 1848, he led a very busy life. Beside the practice of his profession he annotated several law books, the first of which, Chitty on Criminal Law, was published in 1836, one year after his admission to the Bar. He also took an interest in politics and in the affairs of the city. He was a member of the Common Council of Salem seven years during this period, and in 1845 and 1846 was a member of the House of Representatives, and in 1847 and 1848 a member of the Senate of the Commonwealth. But in the meantime his professional business had been well cared for and increased, so that at the time of his appointment as Judge he had a large and successful practice in the courts. He made careful and elaborate preparation in his cases, and was very judicious in their management. In his arguments to the jury, which were effective, he aimed at plainness and directness, with but little attempt at oratory.

He was a justice of the Court of Common Pleas from 1848 to 1859, when that court was abolished and the Superior Court established in its place. He brought to the discharge of the difficult and oftentimes perplexing duties of this office, ability, a large knowledge of the law, and the same careful industry he had shown in the practice of his profession.

Upon leaving the Bench, in 1859, he resumed the practice of the law, which he continued to the time of his decease, although for the last few years he declined, except in a few cases, to engage in trials in the courts. He was also city solicitor of the city of Salem for several years after he left the Bench. But his principal occupation, and the one upon which his fame specially rests, was the editing and annotating of the works of the Masters of the Law. For forty years he has been known not only to the Bar of this State, but to the Bar of every State in the Union, through the valuable contributions he has thus made to the standard works of the profession. Few lawyers in the United States have performed so much or such valuable labor for the profession as Judge Perkins. Among the works he edited and annotated were "Pickering's Reports," "Vesey's Reports," in which work he was associated with Hon. Charles Sumner; one volume of the "United States Digest," with Judge Metcalf; "Abbott on Shipping," "Angell on Watercourses," "Jarman on Wills," "Chitty on Contracts, on Bills, on Criminal Law, and on Pleading." To this last named work he added, in the last edition, very valuable American Forms; "Daniell's Chancery Practice with American Forms," "Sugden on Vendors," "Arnold on Insurance," "Benjamin on Sales," and "Williams on Executors and Administrators." He edited and annotated several successive editions of most of the above entitled works. In reference to one of these works Mr. Sumner said, "The notes and references by Mr. Perkins place their author among American annotators by the side of Story and Metcalf."

Judge Perkins was elected to the Board of Trustees of

Amherst College by the Legislature in 1850, which position he held to the time of his decease, and in 1867 the college conferred upon him its highest honor, the degree of LL. D. He always took a deep interest in the success of his *Alma Mater*, and was constant in his attendance at Commencement during the whole period of his official connection with the college.

In the decease of Judge Perkins his brethren of this Bar have met with a great and irreparable loss. For many years his office has been open to his associates at the Bar, who were always cordially welcomed, to consult the volumes of his extensive library and to obtain from him information of the law and precedents. All of us remember with gratitude his uniform kindness and the cheerfulness with which he imparted the desired information. In the discussion of any question of law, however intricate, he could at once put his hand upon the books in which the decisions applicable to the subject were reported. It seemed as if he remembered the names of all the cases he had examined, and the facility with which he referred to them was indeed wonderful. The memory of his many kindnesses, of his pleasant greetings, of his time so largely and so freely given, his associates at the Bar, old and young, will always delight to cherish with feelings of the deepest gratitude and affection.

May it please your Honor:—I now move, in behalf of the Essex Bar Association, that this memorial of our deceased brother be placed upon the records of the Court.

At the close of Mr. Northend's address, STEPHEN B. IVES, Jr., made a brief and appropriate address, in which he averred that he had long regarded these ceremonies as the most important of professional duties. They are calculated not only to perpetuate the memory of good and useful men, but to soften the asperities of life, and to forgetting the bad and remembering the good in men's lives. The speaker had every reason to cherish the memory of the deceased. He had known him longer than any member of the Essex Bar, although not

professionally. Mr. Ives also spoke of his personal relations with Judge Perkins in professional life. He closed by remarking that in many respects the place of the deceased will remain vacant so long as any present members of the Essex Bar live. It was with the most cordial feelings of assent that he seconded the motion of Mr. Northend.

CHAS. P. THOMPSON, ESQ., endorsed the expressions of the address prepared by Mr. Northend, and in suitable language conveyed to the Court his high appreciation of the subject of the memorial. All the members of the profession had lost more than a personal friend. Few in the profession die who leave so much that is good and so little that is ill. If all left the good behind, he said, the aggregate would be immense. Mr. Thompson spoke of Judge Perkins not as a great master of law, but as a safe and reliable guide, who was always able to show what point had been reached, what had been accomplished in any investigation. Such a man must be great.

District Attorney Sherman followed Mr. Thompson.

JUDGE BRIGHAM, in acquiescing in the request of the memorialist, said that none who are intellectually the equals of lawyers are less likely to be remembered in such a manner as this, and it was therefore wise for the Essex Bar Association to put upon record expressions of the worth of its deceased members. He spoke of the learning, kindness and celebrity of the deceased, the latter fact being attested to by the frequent inquiries concerning him and his work by lawyers in every part of the State. The clerk was ordered to enter the memorial upon the records of the Court.

JAIRUS WARE PERRY.

At a meeting of the Essex Bar Association held September 13, 1877, Messrs. Hazen, Choate, Saunders, Abbott and Northend, were chosen a committee to prepare a memorial of Mr. JAIRUS W. PERRY for presentation to the Supreme Judicial Court.

MEMORIAL.

In the Supreme Judicial Court held at Salem, November 8, 1877, CHIEF JUSTICE GRAY on the bench, Mr. GEORGE F. CHOATE for the Essex Bar Association, presented the following memorial.

MAY IT PLEASE YOUR HONOR. JAIRUS WARE PERRY, LL. D., one of our most valued members, departed this life on Monday, the twenty-seventh day of August last, at the age of fifty-five years and eight months. He was born at Raymond, in the State of Maine, December 18th, A. D. 1821, but when quite young he removed to the town of Sweden. His father cultivated a small farm, but his scanty means and large family compelled him to resort to other occupations for support. At one time he operated a fulling-mill, and subsequently engaged in the manufacture of potash. It was in these employments that our friend's boyhood and youth was chiefly spent. His opportunities for education were limited: such as could be afforded in the remote region, and in the time hardly spared from his duties in contributing toward the common support. He found his recreation in the change from the hard work of the farm to the heavier work of the factory, rejoicing in the latter employment because of the much prized intervals of time it afforded for pursuing his studies; and there he thumbed his book with hands seared and bronzed by his work, and learned the lesson of the value of time which he never forgot. He fitted for college principally by private study, assisted by such teachers as he could

find in the vicinity, at times walking many miles daily through the severe winter season to secure the needed instruction. Entering Bowdoin College a year in advance, he graduated with honor in 1846. He pursued the study of law in the office of N. W. Hazen at Andover, in this state, was admitted to practise in the Court of Common Pleas at the May term, 1849, and soon after commenced business in Salem. During all this time he was self-dependent; indeed from his boyhood he may be said to have earned his support as he went along, the small temporary accommodations he received being speedily repaid. His studious habits and untiring diligence in affairs at once attracted attention, and though without social or business connections in the community, he was early employed as junior counsel in causes by the favor of his seniors at the bar, and in a short time secured a remunerative practice. Subsequently he formed a co-partnership with Mr. Justice Endicott, then a young man, which continued until Mr. Endicott's appointment to a seat upon the bench of this Court. For years the firm was retained in the most important causes, in the preparation and management of which he performed his full share. Notwithstanding his busy life he found time to make valuable contributions to the literature and science of the law. Early in his professional life he projected and made some progress in the preparation of a work on probate law, which, however, was abandoned from press of professional business and other causes. More recently by his annotations to the treatise of Mr. Justice Story on promissory notes and equity jurisprudence, he has increased the value of the original works of a master of the law, and in his own original treatise on trusts (the first American book on that subject) he has shown himself the peer of the ablest writers and expositors of the law in this or other countries. So recently and so suddenly has he been removed from our midst, that there is perhaps no occasion for us to enlarge upon his character or recount his virtues, here on the scene of his labors and his triumphs. It is, however, right that we should do so. The fact that we are here,

and that we are permitted in this presence to present our tribute of regard, attests our appreciation of him, and the general estimation in which he was held. His character, ability and learning were known and respected by all, but to his more intimate companions he showed a cordial, kindly heart and a sterling honesty of character, which made him a loved and valued friend. Inclination, prompted perhaps, by an accurate knowledge of his own capabilities, led him to devote himself more particularly to the study of books and of the principles of the law, though he was not without his forensic triumphs, and he never failed to acquit himself with credit and honor in whatever cause, or whoever might be his antagonist. He early devoted himself to the study of equity, thoroughly mastered its principles, and became an acknowledged authority with the younger members of the bar in this branch of practice. Notwithstanding his devotion to his profession, he found time to pursue his study of the classics and of the best English authors; his Cicero and Burke were always at hand, and the apt quotation from either was seldom wanting, where the topic of conversation admitted. In social life he was a most companionable man, kind and sympathizing, having a fund of anecdote, a mine of learning, common and uncommon, at command. Holding decided opinions upon political questions which he was always ready to make known and defend, when occasion called, he never offensively obtruded them, nor sought political place or power; he recognized that the law is an exacting mistress, and he was not to be allured from his chosen path. He was laborious and painstaking to an extraordinary degree, regardless of himself so long as there was opportunity for effort towards the accomplishment of the object at which he aimed. This trait showed itself in a marked degree when, a few years since, he detected the approach of the malady which finally ended his life. While waging unequal war with his disease he could not be persuaded to relax his labors, but continued to work on with increased assiduity, until at last, clearly warned that he must relieve his overtaxed brain, he

planned a voyage in pursuit of that rest abroad, which his temperament would not permit at home, but would take his departure only after the last proof-sheet had passed his final revision, and, as it proved, the last finishing touch had been given to the closing professional work of his life. This formal recital of his early struggles and professional achievements seems insufficient as a tribute to our departed friend, without a recurrence to his virtues as a man. There was nothing in the surroundings of his youth to prompt him to the efforts he made, unaided, save by the encouraging sympathy of a dearly loved mother. In spite of adversities he won for himself an education and rose to position and fame. The trials of his early days brought no bitterness to his after years; with prosperity came no disposition to forget the favors or friendships of other times; his memories were of kindness, and the recollection of favors received was ever present with him. Especially did his heart go out towards his early friends who were advanced in life, to his instructors and the counsellors of his youth; for them he sought in various ways to cheer and smooth the path of declining years. The memory of his own experiences aroused his sympathy for others in like circumstances, and as he came to enjoy the fruits of his own labors, and his means increased, he found substantial ways of attesting it. In his private life he was exemplary; he was exact in business relations; a good citizen, a hospitable neighbor, a self-sacrificing parent, prizing the welfare and happiness of those of his own household above all considerations of his own convenience or comfort, and deeming no effort too great to be expended in their behalf. Contented at home, he keenly enjoyed the society of his friends there and elsewhere. In his social relations he was peculiarly happy; ever solicitous for enjoyment of his associates, considerate, courteous and careful of offence, his loss is most deeply deplored by those who knew him best. Early in the present year he went abroad in the hope that change of scene and rest from labor would restore the health and vigor which were not again to be his. He returned

stricken and prostrate in body, but still enjoying the society of kindred and friends. For a few weeks with cheerful resignation he awaited the end, and with a benediction for his college, a kind farewell for his friends and professional brethren, and a prayer for his children, he passed to his rest, leaving us to mourn his too early removal from his labors and usefulness.

On behalf of the Essex Bar Association, I respectfully request that this memorial be entered on the records of this Court.

Mr. Stephen B. Ives followed with remarks and seconded the request that the memorial be entered on the records of the Court. Mr. Eben F. Stone also addressed the Court.

These were responded to by Chief Justice Gray, who ordered that the foregoing memorial be entered upon the records of the Court.

CALEB CUSHING.

At a meeting of the Essex Bar Association held January 7, 1879, Messrs. Hazen, Stone, Newhall, Northend, Thompson and Ives, were chosen a committee to prepare a memorial of Honorable Caleb Cushing to be presented to the Supreme Judicial Court.

Memorial.

In the Supreme Judicial Court, at Salem, April 15, 1879, Mr. Justice Morton on the bench, Mr. Nathan W. Hazen, for the Essex Bar Association, presented the following memorial:

"To the many eminent names before borne on the roll of deceased members of the Bar of Essex County, the name of Caleb Cushing has been added.

It belongs to us in commemorating him to trace his career, and to depict his character, as a lawyer, to such extent as a brevity proper to the occasion will permit. He was a descendant in the seventh generation from Matthew Cushing, who emigrated to this country in 1635, from Hingham in the county of Norfolk, England; and in the fifth, from Rev. Caleb Cushing of Salisbury, who gave proof of his truly Christian character by being one of thirty-nine ministers, who signed a letter to Gov. Dudley in 1707, approving the election of Leverett, a layman, to be President of Harvard College.

The subject of this memorial was born at Salisbury, in this county, January 7, 1800. He was educated for college at Newburyport, to which place his father had removed, mainly, it is said, at the private school of Michael Walsh, author of a once famous Arithmetic. Entering college with an imperfect preparation, he made such progress in his studies, that he was awarded the salutatory oration, and graduated before he was seventeen years old. It is remembered of him, that

in college he was reserved in his intercourse; that he sought no aid from others, and nothing was known of the thoroughness of his studies until its fruit was developed. After being tutor in the college one year, he studied law in the office of Hon. Ebenezer Mosely at Newburyport, and was admitted to the Common Pleas Bar, December Term, 1821, and to practice at this Bar in 1826, at Suffolk. His studies at this time were various, and he acquired a wide fame for general knowledge. In his profession he seems to have been content to hold an equal rank with the very respectable gentlemen who then composed the Bar of Newburyport. His first reported case is at November Term, 1826. Rufus Choate was admitted September Term, 1823. It might be expected that cotemporary, so long as they were, in the same county, that they would often be retained as opposing counsel in the same suit. There is a single case reported in which this occurred. No doubt there were other encounters between them. In 1832 there was filed a bill in equity praying for an injunction, Choate for plaintiffs, Cushing for defendants. On the hearing before Shaw, Ch. J., he remarked, in granting the prayer of the bill, that so far as he knew, it was the first injunction issued in the Commonwealth.

In an indictment against the proprietors of Newburyport Bridge, on the trial before a jury, Mr. Cushing for the defense, the Commonwealth obtained a verdict. Mr. Choate was then retained, and it was discovered that the indictment did not expressly allege that a bridge had ever been built. The proceeding was therefore quashed.

In 1827, Mr. Cushing met Mr. Webster, then in the maturity of his power and fame. The arguments are reported at unusual length. As reported, they do not seem to have aided the Court, whose decision is put on grounds not argued by either of the counsel.

Mr. Cushing was elected to Congress in 1835. He soon became a distinguished member of the House of Representatives, and was placed upon the Committee on Foreign Relations. In this capacity he made some highly valuable re-

ports, even then developing unsettled questions between this country and Great Britain. During his service in Congress he seems nearly to have ceased his practice at the bar.

In 1843, he accepted the Mission to China. His instructions were prepared by Mr. Webster, whose son accompanied him, as Secretary of Legation. He was eminently successful in negotiating a Treaty, which, while it remained the rule between the nations, served every purpose of peace and commerce.

To this succeeded his military service in Mexico, which closed in 1848. He then opened an office in Boston and resided at Newburyport. For the succeeding years there is no marked trace of him in his profession. From what has since appeared, these years were probably spent by him in the study of the law by the same habits which he had observed when in college. A statute was passed April 20, 1852, giving an additional Judge to this Court. Mr. Cushing received the appointment, and took his seat on the bench at Suffolk in July following. A *nisi prius* term of this Court was then by law held on the second Tuesday of September in Berkshire, one week before the law term in the same county. This was the first term held for jury trials after his appointment; it was assigned to him. While his reputation for general ability was familiar to them, yet the long period which had intervened since the limited practice of the law which he ever attained, had wholly ceased, without notice of any later study, or of even an appearance in the profession known to them, made his advent into their county to preside at their term of its highest Court, and was looked to with an uncommon interest by the learned Bar of Berkshire. There was a single jury trial; it was in a real action, and involved some questions upon subjects not of frequent occurrence; Judge Cushing reported the case. Abandoning the usual impersonality, he reports, "I was of opinion;" "I admitted the evidence;" "I instructed the jury." The rulings and instructions were embraced in five points to which exceptions were taken. Mr. Justice Dewey, giving the opinion in the case,

closed it with these words: "The result is all the exceptions are overruled." Upon the trial of the cause before the jury, he seized at once the point raised, and was clear and prompt in his rulings. Through the term he was patient and courteous, and exceedingly gracious to counsel. During the week he found leisure to be present at a trial before a justice of the peace. After it was concluded he gave the magistrate some advice as to some points of policy to be observed, and of the duties of his office generally, which was much valued by the recipient. While the opinions of this Court have an equal value, each partakes the idiosyncrasies of its author. Those of Judge Cushing exhibit the great extent of his reading, the thoroughness of his studies, and the keenness and vigor of his intellect. His criticisms of reported cases are often highly instructive. In the second case in which the opinion was given by him, he corrects a misconception of the law in reference to trustees summoned, which, from the cases cited, seems to have become general. In the same term, he criticises an English case, which he calls the anomalous case of Austin v. Drew, and comments upon it as given by four different reporters, each report differing from all the others. His opinion in the case is remarkable for the mastery which he exhibits over the whole series of reports, and for the clear rule of law which his ratiocination deduces from the whole. His opinion in the affirmative, that larceny may be committed of property of one who has unlawfully acquired it, is so drawn as to reconcile in the case, law, morals and public policy. It would not be safe to assert that all his opinions may be held up as models; it may, however, be suggested that each will tend to persuade the reader of its just right to authority.

It was after this period of his life that Mr. Cushing addressed an audience of 3000 persons, when every syllable of his speech reached every one in the vast hall capable of containing such numbers. For ten consecutive days, the Sabbath only intervening, he presided over a meeting of more than 250 members, holding for the most part two daily ses-

sions; the assembly all the time engaged in excited debates, and in the end unable to come to any agreement. The capacity for labor and of endurance shown by him on this occasion display the resources, mental and physical, which sustained him in the intense and protracted efforts to which he was subjected in the course of his later professional life.

He was perfectly formed, of medium size; his features regular and handsome; his face was highly expressive; in early youth it betrayed all his emotions. On one of his first entrances into the Court house at Salem he attracted the attention of Mr. Oliver, the learned author of "Forms and Declarations", and of "The Conveyancer", who inquired with much earnestness who he was. "For," said he, "he is the most ambitious person I ever saw, since he has got here, his face has flushed and paled half a dozen times." The life of the subject of the augury has verified its truth.

In March, 1853, Mr. Cushing accepted the office of attorney general in the administration of President Pierce. The printed opinions of these officers, to the present time, fill thirteen volumes, of which those of Mr. Cushing are comprised in three volumes. These give vivid and clear views of American liberty and modes of government; they show how smoothly and how safely to the citizen they operate when guided by the law and controlled by the constitution. No where better than here can the citizen relumine the light and heat of patriotism, or the student better learn to appreciate the value of the political institutions which protect him, and which he in return is bound to support and cherish. They measure too the crime of whomever would substitute for them violence and arms, or who would pursue a course of conduct calculated to stimulate others to such resorts. Nobly on several occasions did the attorney general defend and vindicate the honor and interests of his country. The necessities of Great Britain for the supply of soldiers to its armies in the war then pending with Russia, led to attempts to enlist men in this country. The British Ambassador then here, and some of the consuls of that nation shared in these

attempts. These violations of the most sacred rights of a nation were reproved by Mr. Cushing in a manner likely to prevent their repetition in all future time.

Application was made to the government for indemnity for the alleged use of Jackson and Morton's patent for anaesthesia in surgical operations, which was referred to the attorney general. After a full hearing he decided against the claim on the ground of the invalidity of the patent. After discussing various points of law, he closes his opinion in this scientific manner. "I think that in the matter out of which came this patent a signal service was performed, honorable to the parties and to their country. It was not the discovery of the anodyne effect of the inhalation of ether or other anaesthetic agents. It was not the invention of the performance of surgical operations on the human body which is reduced to temporary insensibility by anaesthesia. These were ideas familiar for ages to men of science, and the discovery of which no more belongs to any individual as property, than electricity, the fusibility of metals, the specific effects of opium, cinchona, mercury, the capacity of sleep, which Cervantes speaks of, as a valuable invention, or any other of the ascertained qualities of matter, functions of animal life, or laws of inanimate matter. Neither of these things constitutes the honorable service performed in the present instance. That service consisted in the suggestion and execution of a series of experiments, which resulted in demonstrating the safety and utility of employing more frequently than had been done heretofore, the known agents of anaesthesia, by known methods in order to the known end of facilitating surgical operations. That was a great good and worthy due honor. There could be no question of patent in the successive steps of discovery and demonstration, which, beginning with Copernicus, continued by Kepler and Gallileo and consummated by Newton, unfolded the mysteries of the law of gravitation, and the composition of the solar and planetary systems of the universe. So there can be no patent for the expansibility of heated aqueous vapor, nor for its application

to use, as a mechanical force ; but there may be for specific instruments or methods of such application. In like manner electro magnetism cannot be patented, nor even its use as a means of communication, but particular means of its employment may be patented."

Since this opinion was given the public have not heard of claims made under this patent. Mr. Choate was retained and went once at least to Washington in reference to it. If it was the part of Mr. Choate to inform Mr. Cushing, that so far as the indictment went, on which his clients had been found guilty in building a bridge, the bridge itself might be a myth, it was now the part of Mr. Cushing to apprise Mr. Choate that the letters patent of his clients were a figment. These distinguished brethren held each other in high esteem. They became, with Robert Rantoul Jr., joint purchasers of a large tract of Western lands; the whole speculation was finally assumed by Mr. Cushing. It subjected him to the vicissitudes of a frontier litigation with an antagonist who proved to have equal determination. A long and undecided contest between them was closed by a voluntary partition of the estate. The steadiness and intelligence with which the attorney general held to the rule of law, his love and reverence for the constitution, his complete knowledge of the history of his country, must have been highly promotive of the success of any administration. That of President Pierce has accordingly been said to have been one of the most successful. Perhaps the affluence of learning, the skill of interpretation and the power of analysis, displayed in the three volumes of opinions by Mr. Cushing, are not excelled in these characteristics by the work of any lawyer in the English language. The reader of these opinions will observe and admire with what care their author has derived our political institutions, liberty, and rules of judicial decision from the common law, and has drawn their origin from its fountains, from the Year Books, from Coke, Plowden, Viner, and all the ancient sages of this jurisprudence, and has traced the recognition of its precepts and privileges through the whole series of modern

reports, and even in the latest text writers. These researches were his own work seldom aided by counsel on either side of the question presented. In this office, as well as in Congress, the grounds of controversy existing between this country and Great Britain excited his attention, and he considered them as they occurred to him.

After his retirement from office he was retained in many highly important suits. One of the most remarkable was that of the Gaines claim to land in the city of New Orleans. The case in which he was engaged for the plaintiff and claimant, was the sixth suit in the Supreme Court of the United States. Each of the five former actions had been decided in favor of the defendant, who, however, was not the same person in all the suits. The record of the case in question consisted of one thousand printed pages. Among the subjects of investigation, one was into the criminal jurisdiction of the Spanish Inquisition. Judge Wayne in closing his opinion for the claimant, said: "When hereafter some distinguished American lawyer shall retire from practice to write the history of his country's jurisprudence, this case will be registered by him as the most remarkable in the annals of its Courts."

The Trent affair was an early incident of the late civil war. The capture of the Confederate citizens was the subject of general gratulation. Mr. Cushing decided at once that they could not be held, but must be surrendered upon the British demand. His judgment prevailed, and was carried into effect by a dispatch, to the writing of which he contributed, but its entire authorship is not to be ascribed to him. He saw in this event a sufficient cause for waking into life all the elements of discord subsisting between the two nations, and our entrance into war with the wrong on our side. Through the civil war Mr. Cushing was constantly consulted by Mr. Seward. So frequent were the calls for this purpose, that Mr. Cushing was induced to remove to Washington. About this period, he was on a learned commission to revise the Acts of Congress. Those, who have had occasion to ex-

plore the vast and intricate mazes of the United States statutes at large, will best comprehend the labor and care necessary to the performance of this duty, as it would be performed by him. When the war had ceased the American government claimed from that of Great Britain reparation for damages inflicted by it upon this country during the conflict, and by reason of its existence. Mr. Cushing has stated more forcibly, than has been done by any other person, the charges to which the British government had thus subjected itself. The negotiation of the Clarendea Johnson Treaty followed, which was rejected by the Senate. The alternatives were then war or fresh negotiation. The studies of Mr. Cushing had qualified him for an active agency at this crisis. He had an enumeration of the affairs and interests unsettled between the governments. He found there were five different subjects involving forty-three articles to be provided for in any Treaty which should be a perfect settlement between them. To negotiate such a Treaty successfully must be the work of great knowledge and sagacity, of vast labor, and of much delicacy. When it had been agreed to negotiate, five commissioners were appointed on the part of the United States, three of whom spoke only when officially called upon, leaving the negotiation where it belonged in the hands of the government, which for this purpose consisted of Mr. Fish here and Mr. Schenck in London. It is not pretended that the Secretary or the Ambassador had more than a general knowledge of the subjects of negotiation. Mr. Cushing had analyzed and classified them. They were fully in his mind, and could be dealt with by the ability he was so well known to possess. Whatever in the intercourse between the governments could be as well done by Mr. Cushing, as it could by the Secretary or Ambassador, though done in the name of one of them, was really done by him. The result of the negotiation was the Treaty of Washington, which does provide for a perfect settlement between the two nations, embracing specifically the five subjects, and forty-three articles enumerated by Mr. Cushing. It referred the Alabama claims to an arbitration

before which the United States and Great Britain were to appear, as parties to a suit at law. Mr. Cushing was counsel and agent for the United States. The American case, as filed with the arbitrators, consists of eight octavo volumes comprising five thousand two hundred and forty-four pages. The Britain case is contained in three volumes, and covers two thousand eight hundred and twenty-three pages. The British counter case is in four volumes folio; this is equivalent to the plea and answer; the American is in three volumes, folio.

The United States claimed for consequential damages; for damage to the nation in its sovereign capacity, as well as for damage to the individual citizen. Much heated discussion through the press followed upon the disclosure of the American case stating this claim. While the discussion went on, Mr. Cushing made his headquarters at Paris, as the great center of international communication, and was busily engaged in preparing the American counter case, and in watching the current of discussion and the state of public opinion. When therefore the arbitration assembled at Geneva he was well informed of all the influences to which any had been subjected who were concerned in it. The arbitrators took cognizance of the claim for consequential damages, the injury done to the sovereignty of the nation. It was hence that the sum awarded so much more than covered the claims for individual losses. The award was a triumph for our country. The honor of its achievement belongs to Mr. Cushing. To him also belongs the higher glory of being author of the Treaty of Washington.

Thus at Geneva on the same plains of Europe where Waterloo and so many other bloody battles have been fought in every age in the settlement of national quarrels, our country without shedding one drop of blood or adding one pang to the sum of human misery, vindicated herself, gained justice and a victory full of glory over the most powerful of nations. In all this Mr. Cushing was as much the leader, as he would have been if the commander of a conquering army. Equal

honor at least is due to his memory, as if he had won the triumph by force of arms. These services were rendered by him to his country, as a lawyer. It was his learning, and skill as a lawyer, which enabled him to render them. After rendering these benefits to the nation, he was nominated to be Chief Justice of the United States. The nomination was withdrawn. Enquiry into even the alleged causes and pretexts will not change the obvious character of the transaction.

Through life Mr. Cushing was self reliant. He had the industry of Cicero, but he had no Atticus. Like Cicero, he was never a thorough partisan. He declared his purpose to maintain his individuality. He would never suffer himself to be absorbed in party. Hence he never secured to himself perfect political allegiance. The offices he held were given to his merits, and for the sake of his service in them. It happened to him, as we have seen in this brief recital, to enter office under circumstances calculated to provoke criticism on any failure or deficiency on his part. When he laid down office his discharge of duty in it had been such as to leave room only for praise and admiration.

His attainments in learning were such as a thirst for knowledge, a love of labor, an unrivalled facility of acquisition and a most retentive memory supplied. His use of them was regulated by a severe and well disciplined taste, by habits of order and method, by a perfect control over his attention, by a keen perception, by extraordinary powers of analysis, and of concentration, and by a high respect for truth. He feared no task, he shrunk from no toil, no undertaking within the compass of human labor was too vast, or too tedious for the encounter of his courage. The work he performed has not yet been measured ; much of it is yet locked in the archives of state, or lost for the time in the legion of documents. His name and memory, though for very different reasons, like those of the great English lawyer, must be "bequeathed to his countrymen after some time be passed over." When posterity reckons the names of the heroes whose deeds and lives have honored and adorned humanity, it will count among

them the name of Caleb Cushing. We seek to perform what belongs to us to do ; to claim for our profession the honor his name confers upon it ; to illustrate his example ; and to bear our testimony, as witnesses, to his character and career."

Mr. Eben F. Stone moved that the memorial be placed upon the records of the court, and made a brief eulogy. The motion was seconded by Mr. William D. Northend, who said, a great man, a great lawyer, a great statesman, had passed away. It was right and fitting that the bar should recognize his merits.

JUDGE MORTON in response said :—

This is not the place nor the occasion to attempt to delineate the intellectual and personal character of a citizen who has filled so large a place in the public eye as the late Caleb Cushing.

But we may briefly allude to the qualities which were the foundation of his fame, and in which he is most worthy of remembrance and emulation.

For sixty years of a most active life he maintained the high reputation with which he left college. In talents versatile, in reading omnivorous, in study and mental labor indefatigable ; of him it could be said with more truth than of almost any man of his time, *labor ipse voluptas*. No stage of his long and varied career affords a better or more characteristic portrait of him than his brief term of service upon this bench.

For some years previously he had been so engrossed in other fields of labor that some entertained doubts of the fitness of the appointment.

But those who doubted did not know the man.

He immediately concentrated his remarkable faculties upon his new duties, and was said in the space of six weeks to have read through the entire series of the Massachusetts Reports : he surprised the whole bar by the ease and ability with which he presided at nisi prius ; and I have been told by his colleagues, not one of whom survives, that he took a lead-

ing part in the consultations of the full court, especially upon questions of constitutional and public law.

After a service of but ten months he resigned to accept the office of Attorney General of the United States. Since that time his valuable public services are familiar to all, and have been fittingly referred to in the memorial of the Bar; his learning and his counsel have been a support to successive administrations of the national government; and his studies in jurisprudence, politics, history and literature were continued without interruption to the end of his long life.

Concurring in the sentiments of the memorial presented by the Bar, I shall order that out of respect to the memory of Mr. Cushing, the memorial be recorded, and the court be now adjourned.

OTIS P. LORD.

At a meeting of the Essex Bar Association, held March 14, 1884, Messrs. Northend, Choate, Abbott, Saunders and Thompson were appointed a committee to prepare a memorial of Mr. Otis P. Lord, to be presented to the Supreme Judicial Court.

Memorial.

In the Supreme Judicial Court in Salem, on Thursday, April 24, 1884, Chief Justice Morton presiding, Mr. Alfred A. Abbott, in behalf of the committee, presented the following memorial:

May it Please Your Honor:—The Committee of the Bar Association have had another duty delegated to them, upon the discharge of which they enter with unaffected diffidence.

The death of Judge Lord has already been formally announced to your Honor's Court, and before the full Court for the Commonwealth, eloquent tongues have narrated the events of his life and vividly portrayed the striking traits of his character as a man and a jurist.

But it seemed to us that here in this county, where he was born, and dwelt, and died, where his earliest triumphs were won, with whose social, political, and judicial history he was so long and so closely identified, in this court room which he dedicated, the Association which he organized, and of which he was the first President, would fail alike in respect to the memory of the dead and in due regard to the sensibilities of the living, if it did not offer for record some tribute of its own, though it be but an humble repetition of a tale that has been told.

The main incidents of the life of Judge Lord, how, on July 11, 1812, he was born at Ipswich, then a shire-town of Essex, the son of the old Register of Probate, Nathaniel

Lord, who, for more than one generation, shared with Judge Daniel A. White the love and veneration of the people of Essex,—how he was fitted for college at Bradford and at Dummer Academy, and entered Amherst College at the age of sixteen, graduating in the class of 1832,—how he pursued the study of the law in the office of Judge Morris of Springfield and in the Dane Law School at Cambridge,—how, admitted to the bar in 1835, he began and continued practice in his native town, until, in 1844, he removed to Salem, there taking the office and succeeding to the business of Joshua H. Ward, then recently appointed to the Bench of the Court of Common Pleas, all this time his reputation as a lawyer and the number of his clients steadily increasing, as he ripened in learning and developed the varied powers of his great intellect, and became one of the acknowledged leaders of the Essex Bar,—how, drawn into political life, he represented the city of his residence and the county in the State Legislature, serving in the House in 1847 and 1848, in the Senate in 1849, and in the House again in 1852 and 1853, in the latter year being also a member of the Constitutional Convention, and there, by his constitutional learning, strength of reasoning, bold leadership, and forensic eloquence, winning such deserved recognition throughout the Commonwealth. that on his return to the Legislature, in 1854, he was elected Speaker of the House, gaining, by his firm, impartial, and dignified conduct in the Chair, by his thorough acquaintance with the principles and details of procedure, and by his singular tact and unsurpassed judgment in administration, a name and fame as a parliamentarian such as few men in Massachusetts have ever won,—how, bearing all these burdens and faithfully discharging all these public trusts, he still clung to his profession, leading in all the important causes in his own and in many in other counties, and having a clientage not exceeded in number and consequence by that of any lawyer of his day,—how, on the constitution of the Superior Court, in 1859, he was appointed one of its Justices, in which capacity he served until, in 1875, he was made an

Associate Justice of this Court, and here aided in upholding the high reputation of this august tribunal for sound learning, judicial wisdom and incorruptible integrity, until, having filled up the measure of days allotted by the Psalmist, he sought retirement and rest, and soon went down to an honored grave, with the general benediction, "Well done, good and faithful servant,"—with all these leading incidents of this eventful life we have become recently familiar, as they have been set forth in the courts and rehearsed in the public press—and it is a noble record—and yet to those of us who knew Otis P. Lord from his early manhood and through his long career, this recital is as inadequate to convey a correct impression of the real man as would be the lines upon the map of a country to disclose the shining ores beneath its surface, the fruitage of its soil, or the grandeur and beauty of its landscape.

Judge Lord was cast in a large and heroic mould. All the powers of his nature were upon a broad scale. Even his prejudices, emotions and passions were after the strong type of his intellectual faculties. And he had his nurture in a grand school. Beginning his practice in a neighborhood then somewhat famous for its litigation, and the nature of which required a delving among the very roots of the common law, and gradually working his way into causes which involved the larger issues and more liberal principles of the Law Merchant, he soon came to measure his strength with a band of lawyers, competition with whom could not fail to arouse all his latent energies, and who, as we look back upon them now, loom up in the past in almost colossal proportions. Mr. Leverett Saltonstall yet lingered in the courts, with his ample culture, his ripe experience, and his courtly bearing, charming juries by his manly eloquence, and winning all hearts by the radiant honesty and beauty of his character. Mr. Nathaniel J. Lord, the older brother of Otis, ripe and accurate in his learning, skilful in dialectics, acute, adroit, of unruffled courtesy and exquisite finish, yet striking blows as hard as could the mailed hand of a knight; Joshua H. Ward,

with his flashing eye, beaming smile, silver tongue, and perceptions quick as intuitions, whose brief but brilliant career gave the fair promise of a great fame, only to be blighted by his early death; Asahel Huntington, known to most of the present members of our bar only in his retired and modest position of Clerk, but who for a quarter of a century, not only on the criminal side, where he prosecuted with such vigor and success, but in civil causes, by his strong good sense, his unrivalled skill in dealing with a case of circumstancial evidence, his powers of sarcasm, his broad humor, his indomitable will, and his earnestness and energy born of deep moral convictions, had such control over an Essex County jury as few men have ever held,—and then, not to name others, towering above all, the peerless and incomparable Rufus Choate, not so long removed from Essex but that his old clients still kept him in our courts, and where to his last days he yet delighted to come and renew the triumphs of his youth, with whom Mr. Lord was often associated, and who was known to have said of his frequent junior that there was no lawyer whose aid he more eagerly welcomed, and no one whom he would not quite as willingly see upon the other side. These were the teachers of Judge Lord, in daily conflict with whom he had his professional training, and under the inspiration of whose example, every faculty of his nature found its full development.

But Judge Lord was no imitator, copied after no man, was emphatically *sui generis*, and had from the first an individuality, a freedom of thought and an independence of action which stood by him to the last.

Perhaps of all those who in times past have been foremost at the Essex Bar, and whose fame rests upon their laurels won here, Judge Lord by general consent, stands *primus inter pares*, whether we consider the extent and variety of his practice, his ample learning, his union of tact and skill with energy and force, his marvelous ability to deal with and solve the most complicated questions of law and fact, his control over the minds of men, by the might of pure reason,

enforced by a vehement and fervid eloquence, or by the signal success which crowned his work. If one were asked to single out the intellectual traits which most distinguished him, it might be said that they consisted in the rare union in one person, of exceptional powers of analysis, the faculty of microscopic insight into details, a Scotch acumen and keenness of perception, and at the same time a capacity for the broad view, the wide comprehension, and the firm grasp of the largest outlines of a subject. Perhaps his strength lay in the well-balanced combination and rigid discipline of all his mental gifts. But whatever may have been the intellectual secrets of his success, they gained added effect from the moral qualities of the man. His moral honesty was organic and it was transparent. As his intellectual integrity was so constitutional and controlling that he could not make a simple narration of facts otherwise than in exact conformity with the truth, so that his statement of an opponent's case which he proposed to demolish was the strongest argument to be made in its favor, so his moral integrity was equally and conspicuously a part of his nature, and fortified and made more effective his mental abilities. He could not use artifice or cunning devices with a jury, indirection or sophistry with the Court, or sharp or questionable practices with a brother attorney. In all his professional conduct and dealing he was exemplary. Perhaps no better illustration of his ruling sense of right and wrong can be given than the fact, so well known to all his contemporaries at the bar, that though when fairly launched in a trial, he pursued it with impassioned zeal and fervor, no one ever more enjoying the delights of the conflict, the *gaudia certaminis*, yet there was no man with whom it was easier to settle a controversy, and when it once became evident that a fair adjustment was possible, he was always ready to advance at least half way in a compromise, and in the spirit of a just arbitrator rather than a partisan attorney, pay regard to and secure the fair rights of both parties. His whole life and conduct as a lawyer were a complete refutation of the shallow dogma, that the practice of the law, deal-

ing in technicalities and hedged about by precedents, while it sharpens certain faculties and intensifies some of the powers of the mind, yet narrows its breadth and dwarfs its full and healthy growth, and even blunts the finer sensibilities and higher moral sense. He illustrated that its generous pursuit, involving the largest trusts and the most sacred confidences, can find in the protection of private rights and the conservation of principles, which are the foundations of public order and safety, the amplest field for the development of the noblest virtues and the exercise of the supremest faculties of a full and perfect manhood.

Of the nearly half century of Judge Lord's professional life, a full moiety was spent upon the bench. His brilliant career at the bar had given him a great reputation throughout the Commonwealth, and there were the largest expectations of his success as a Judge. To say that these anticipations were fairly realized is to stamp with unqualified approbation his judicial labors. He brought to the Bench not only vast experience, profound and varied learning, the power of acute discrimination and an irresistible logic, and a robust common sense which instantly grasped the true bearing and value of facts and recognized the relations of cause and effect, but an earnest, emphatic and impressive manner, and a command of language, lucid, terse, incisive, vigorous and bold,—so that, as was once said by a layman after listening to one of his characteristic charges to a jury, "that trumpet gives no uncertain sound." The ablest lawyer admired the precision, clearness, fullness and force with which the legal principles governing a case were stated, while the dullest juryman could not fail to see their application to the facts, which were so marshalled, weighed and presented to his understanding, that the path to the verdict seemed straight and plain.

When Judge Lord was appointed to the bench of this Court, some of his friends felt an apprehension that the promotion had come to him too late in life to admit of a ready adaptation to its peculiar duties, or of his making so

striking a figure in this position, as under more favorable circumstances his splendid abilities would certainly have enabled him to do. But surely the result proved that in this step there was no cause for regret, either for him, the profession, or the public. What he was in consultation is best known to your Honor and his other associates,—though it is not to be conceived how his large acquirements and rare powers of mind, his sagacity and wisdom, his wide practical knowledge and subtle skill in solving the most intricate problems, could have failed to be of invaluable aid to the Court in upholding the settled landmarks of the law, or in defining those nice distinctions and creating those new canons which the demands of modern society and novel modes of life and business have made necessary. But in the recorded opinions of the Court which have come from his pen, so copious in their learning, sound in their reasoning, safe in their conclusions, and epigrammatic in the point and nerve of the language in which they are clothed, and in the discharge of those functions of his great office which brought him into public view as a *nisi prius* judge, no words of praise can be too extravagant to portray his excellence. It has been sometimes said that he was brusque and austere in his manner, and at times harsh and severe in his treatment of counsel. That he was impatient of incompetency and ignorance, indignant at pettifogging and chicanery, and quick to denounce double-dealing or fraud, may be true enough, but every honest man's case and every righteous cause were safe in his hands, and every honorable lawyer, however inexperienced and timid, felt that he had a friend in the judge upon the bench, who, inspired by the eternal light of justice, would aid him in vindicating the truth and the right. And how he would warm to his work, how he would strip a case of all irrelevant matter, brush away the web of fiction and sophistry, and bring out clear as the day the simple and real issues. And how he would rise to great emergencies, and when important interests were at stake, and character and personal liberty involved, or life and death hung trembling in the bal-

ance, how he would become the very embodiment of inflexible justice, and with righteous indignation and matchless fervor and eloquence, vindicate the majesty of the law. If there were spots on the sun, they did not chill its warmth or dim its effulgence.

There have been those amongst the warmest admirers of Judge Lord, and perhaps they were those who knew him best and measured him most accurately, who have thought that he would have found the fittest field for the display of his great powers in the interpretation of constitutional jurisprudence or in the higher walks of statesmanship. Had his lot in life been cast elsewhere or in another day, perhaps this might have been so. Certainly his modes of thought and the dignity of his conceptions were fashioned after the pattern of those who have moulded the organic law of States, while the unerring logic, massive judgment, and eloquent oratory with which he enforced his convictions, remind us of those who seemed born " th' applause of list'ning senates to command." There is no page in his eventful history brighter than that which records the part he took in the Debates of the Convention of 1853; and his masterly exposition of the issues involved in the propositions submitted to the people, accomplished more than any other one instrumentality in bringing about the final result. If it was well said of Lord Mansfield, " how sweet an Ovid was in Murray lost," as truly may it be said of Judge Lord, that our gain in him as a lawyer and a jurist was the loss to the nation of a publicist and a statesman.

In private life Judge Lord was one of the most interesting and agreeable of men, dignified but cordial in his manners, piquant and racy in conversation, both just and generous, a staunch friend, a kind neighbor, an upright and liberal citizen, and in his home, genial, hospitable, gracious, and until domestic bereavement and the infirmities of age cast their shadows, overflowing with high spirits and abounding in good cheer. Although after he retired from active duty, his mind, brooding over doubts and dangers, might have

grown morbid in what some of his friends regarded as prejudices, and his utterances have become more emphatic and severe, yet those friends recognized in this the mental and moral type and training which clung to "the logic of law as against the logic of events," and an unswerving loyalty to the dictates of reason and of conscience. His intellectual vision was undimmed to the last. He knew that his days were numbered, and he awaited the final summons with the calmness of a philosopher and the faith of a Christian.

The portrait of Judge Lord hangs upon the wall before us. We are pleased to think that the genius of the artist has faithfully delineated the striking features of our departed friend. It will be a treasure fondly prized by the members of the Bar, for whom he ever cherished so warm a regard, and which he manifested in the generous provision of his last will and testament. But it will be long before those eyes, as they bend down from the canvas upon the busy scenes of this court room will rest upon one who shall unite in himself all those attributes as a man, a lawyer and a jurist, which have so distinguished and will ever keep bright in our memories the name of Otis Phillips Lord.

May it please your Honor, it is the request of the Essex Bar Association that this memorial, feeble and inadequate, but truthful and sincere, may be placed upon the records of the Court.

Mr. William D. Northend then said:—

May it please your Honor:—The memorial which has just now been read, so fully and happily describes the abilities, characteristics, and services, of our deceased brother, that we perhaps ought to be content with a simple expression of our hearty concurrence. But he, in the performance of his professional duties, was so distinguished and exemplary, and his loss to the profession and the community was so great, that the members of the Bar desire to express personally, the love and regard they entertained for him, and their appreciation of the great and irre-

parable loss we have sustained. Our deceased brother was born, and during the entire period of his professional life, resided in this county. The older members of the Bar will remember Judge Lord as the great *nisi prius* lawyer of the county. Thoroughly grounded in the principles of the common law, with a logical mind which could seize upon and apply with wonderful power the legal principles to the facts in a case, and with a keenness and power in cross-examination unsurpassed, he was a most formidable opponent in the trial of a case. He was a natural advocate. He revelled in his immense ability to exhaust all the arguments in behalf of his client. Later, upon the Bench of both our higher courts, he exhibited the learning and power which made him so conspicuous at the Bar. It has been said that the qualifications for success as an advocate are to a certain extent incompatible with the exercise of that strict impartiality which should characterize the Bench. But Judge Lord had in an eminent degree, honesty of head and of heart, and few men, with his temperament and constitution of mind, ever better met the expectations of their friends upon the Bench. His friendships were strong, and to those who were permitted to enjoy personal intimacy with him, he was one of the kindest and most genial of men. He finished a well rounded life and has been gathered to his fathers, full of years and of honors.

In behalf of the Essex Bar Association I cordially second the motion of Brother Abbott, that the memorial be entered upon the records of this Court.

Mr. Daniel Saunders then spoke as follows :—

The reputation of Judge Lord as a lawyer of unusual ability, was established very early after his admission to the Bar.

His first cases in court were presented with a clearness and conciseness of statement of law and fact, which gave him a standing at once with both the Bar and the Court. The importance of a clear and comprehensive opening of a case to a jury has never been over-estimated by lawyers of much prac-

tice. In cases of great importance, senior counsel often instruct their juniors in this part of their duty with great care, or perform the work themselves. When, however, in his early practice, leading members of the Bar had Mr. Lord as their junior, they soon learned to give themselves no anxiety as to the opening statements of their cases. His openings were so clear and distinct that when he had finished, both the court and jury had a full understanding of the questions at issue; matters were so simplified that the least intelligent upon the panel had a correct idea of the questions upon which his verdict was to be rendered.

A few years of practice, brought him a full docket and retainers in the most important cases. When I came to this Bar a few years after his admission, the question, who was its leader, was an open one. Many gave the position to him, others assigned it to his distinguished elder brother, Nathaniel J. Lord, then in full tide of successful practice. His brother had a gravity of manner combined with a keen intellect and a thorough knowledge of law, which led both court and jury. Judge Lord had an equal keenness, with as thorough a knowledge of law, and an impulsive force and vigor not always under rigid restraint, but always logical, which compelled both court and jury to sustain his conclusions of law and fact. When ill health compelled his brother to retire, there were none left to divide with him the honors of leadership.

What most surprised the younger members of the bar when they had occasion to engage his services as their senior, was the ease with which he grasped the whole merits of their cases. I know from personal experience, that in cases to which I had given days and weeks of careful labor in their preparation and had looked through every digest to find authorities to sustain my law, a brief consultation was all that was needed to give him a full insight into all the merits of the case upon the facts; and the application of a few well-known principles settled all questions of law. Thus hastily equipped, he was ready to fight successfully the hardest

battles in legal warfare. In the examination of witnesses he had a marvelous power of calling out every fact bearing upon the case. A single fact elicited, gave him a clue to the whole chain of evidence. No matter how stupid, forgetful or dishonest a witness might be, he seldom left the stand with any material fact withheld or concealed. His cross-examinations were thorough and exhaustive, though sometimes the great quickness and clearness of his mind led him to deal harshly with a witness, attributing to him an intent to withhold facts, when only sluggishness or confusion of mind prevented him from readily testifying to all matters within his knowledge.

Upon political questions Judge Lord had strong convictions and the courage of his convictions. Never a politician, in the common acceptation of that term, but always a strong advocate of the principles and the candidates of the party whose cause he espoused. Upon his first appearance in the Legislature of the State to which he was frequently called, he was recognized as a party leader of commanding ability; but in matters of legislation he was judicious and conservative, giving the weight of his great talents only to those measures which he believed to be for the benefit of the whole body politic.

In social life, he enjoyed in a marked degree, the society of his friends, with whom his unaffected affability and kindness attested the sincerity and warmth of his friendship.

Called from the bar to the bench (a step upward in our profession, but whether a step forward in the case of Judge Lord is a mooted question among his friends), he carried with him that quick perception of the merits of a case in all its bearings, which so distinguished him at the bar, a perception which sometimes made him impatient at the slowness with which counsel travelled, and he frequently urged them forward with more haste than they were well capable of. His mind was so clear and active that he was not always able to sympathize with those of slower pace. This great quickness which made him foremost at the bar, was upon the bench sometimes a source of impatience to himself and

annoyance to counsel, but it gave him great strength in his charges to a jury. His charges were clear and strong, usually brief, yet so full and explicit that the jury were never left in doubt as to the matter to be considered by them; the facts to be found and the law applicable thereto.

No man at the bar or upon the bench loved justice and fair dealing more than he did. At the bar an agreement made by him was as binding as a judgment of the Court. Upon the bench the least semblance of trickery or fraud in counsel or client was sure to be exposed with scathing rebuke. In matters of law, his rulings were explicit, and in a bill of exceptions never changed or shaded to give them a different effect, or to deprive them of the significance which they received during the progress of a trial.

The professional, official and social character of Judge Lord can be summed up in a few words. He was a great lawyer, a powerful advocate, a wise legislator, a strong, sound judge, a firm friend and an honest man. When the history of Essex County is written, his name will be found in the front ranks of those peerless men who have made Essex County the first county in the State, as the birthplace of great lawyers, brilliant advocates, and eminent jurists.

Mr. Charles P. Thompson then said:—

May it please your Honor: I came to the bar of this county too late to witness the exhibitions of Mr. Justice Lord's ability as an advocate, although I remember to have heard him cross-examine a defendant, who had offered himself as a witness in a criminal case, where he assisted the Government in the prosecution. That cross-examination was terrific; his sudden and powerful mental grip so checked the witness' circulation that he fainted. In a subsequent trial of the case, Judge Lord was a witness, and testified in relation to what the defendant said in that examination, and on being asked by the counsel for the defendant if he did not examine him "somewhat harshly," he replied; "somewhat energetically." I think all who have seen him

at the bar or on the bench can well understand what an energetic cross examination by him must have been. No man had a more enviable reputation for ability of the highest order at the bar, than he. He stood foremost among the ablest lawyers of the Commonwealth, and it is certain that his reputation was based upon an honest and solid foundation, wonderful mental powers, enriched by diligent study of the elementary principles of law and the application of those principles as illustrated in the reports. He had an honest head and an honest heart. Those who have known him as a judge, will readily comprehend how forcible were his arguments. But I have been a frequent witness of the manner in which he performed the duties of a judge during all the time he was upon the bench of the Superior Court and upon the bench of this Court, and I am sure that no expressions of appreciation as to the ability and faithfulness with which he performed those important duties, can be considered as exaggerations. He brought to the discharge of the duties of the bench, a mind most thoroughly trained for judicial investigations, with great familiarity with legal principles, and large experience at the bar. For quickness and clearness of perception, for strength and capacity to deal with the most intricate questions, and unravel the knottiest judicial problems, and for clear and forcible statement he was the admiration of all who witnessed his judicial action. And all can bear testimony to his love for honest, bold and fearless advocacy, and his contempt for everything like disingenuousness, deception or fraud. I will not say more. My own feelings and sentiments and those of the bar have been more fitly expressed in the memorial presented and the remarks of those who have preceded me, than it is possible for me to express them. But I could not well refrain from saying a word individually in recognition of the distinguished merits of one before whom in his official capacity, it has been my good fortune to appear so often, and with so much satisfaction, and from whom in common with the other members of this bar, I have always received so great personal kindness.

CHIEF JUSTICE MORTON then said:—

BRETHREN OF THE BAR:—I have listened with deep interest and feeling to the beautiful memorial of Judge Lord, drawn on your behalf with the loving hand of a friend, but with the discriminating judgment of a critic.

When, soon after his death, a similar memorial service was held before the Court for the Commonwealth, I had occasion, on behalf of the whole Court, to express the deep sadness felt by us all on account of the sickness and death of our associate and friend. The same sadness and sense of loss was felt by the bar and the people of the whole Commonwealth. We lost an able, learned, and valued assistant; the bar and the people lost a vigorous, fearless, upright magistrate, of great learning and of unquestioned integrity and purity. In every relation of his life as a private citizen, as a legislator, as an advocate at the bar, and as a judge, he was a man of marked individuality and strength, and everywhere made himself felt as a power.

For the first half of his mature life he was a member of your bar. I need not, in this presence, dwell upon the great qualities which distinguished his career at the bar, upon his abundant learning, his great mental vigor, his keen insight into the motives and forces which controlled the minds of jurors and witnesses, his power of analyzing and grouping evidence in a case, or his vigorous, aggressive and caustic eloquence. These are best remembered by the older members of your bar who have met him in the contests of the court-room. It is the strongest assertion of his great abilities and success, to state the fact that for many years he was the acknowledged leader of the Essex Bar.

In 1859, a partial reorganization of our judicial system was made and the Superior Court was established, with extensive jurisdiction and large and important powers and functions.

It was universally regarded as a matter of public congratulation that Judge Lord was willing to accept a seat upon this Court as one of its justices. From that time, until he was stricken down by disease, a period of nearly a quarter

of a century, he rendered most valuable services as a member of the two highest courts of the Commonwealth.

It is not my purpose to do more than merely to refer to his distinguished merits in these positions, which attracted the attention of the bar and the people of the State. His fame belongs to the Commonwealth; but there is a special fitness that the bar of this county should take notice of his death by some suitable memorial. He was one of your bar. Here he laid the foundations of his great fame. He always retained a lively interest in and love for this bar, an interest and a love manifested by the latest act of his life, when, speaking through his last will and testament, he made provision for the support and increase of your law library, in which he had, as you have, a just pride.

I would adopt as my own, the sentiments expressed in your memorial and in the eloquent and touching tributes which have been paid by so many of your number; and, as you request, shall order that the memorial be entered upon the records of the Court, as a permanent monument of our respect and affection for our departed friend.

STEPHEN BRADSHAW IVES.

On February 9, 1884, at a meeting of the Essex Bar Association, Messrs. Northend, Choate, Abbott, Saunders and Thompson were appointed a Committee to prepare for the Court a memorial of STEPHEN B. IVES.

MEMORIAL.

At the Supreme Judicial Court held in Salem on Thursday, April 24, 1884, CHIEF JUSTICE MORTON presiding, MR. ALFRED A. ABBOTT, in behalf of the Committee, presented and read the following memorial:—

MAY IT PLEASE YOUR HONOR:—On the 8th day of February last, MR. STEPHEN BRADSHAW IVES, for so many years a distinguished member of the Essex Bar, departed this life.

At a meeting of the Essex Bar Association, held on the following day, a committee was appointed to prepare and to present to this Court a memorial of the deceased; and it is in fulfilment of the duty assigned them that that Committee, in behalf of the Association, now craves your Honor's attention.

Mr. Ives was born in Salem, March 9, 1827. He came of an ancestry which, on both the paternal and maternal sides, was representative of the earlier settlers of the Massachusetts Bay. He was the son of Mr. Stephen B. Ives, a gentleman whose genial presence was familiar to us all; who at more than four-score years preserved almost the vigor and bloom of youth, and whose decease preceded by but a few short months the untimely death of the son in whom he had such just and loving pride.

Mr. Ives had his early education and was prepared for college in the public schools of Salem, entered Harvard in the year 1844, and was graduated in course with the class of 1848. After leaving the University he was engaged for a brief period in the occupation of school teaching, during one season at

Newbury, and afterward in his own city as principal of one of its grammar schools; and to the elementary training and knowledge of human nature thus had and acquired, he was accustomed to attribute much of his success in after life.

But his mind soon became turned to the profession for which it early became evident that he was peculiarly adapted, and he entered and pursued the study of the law in the office of Messrs. Northend & Choate. He was admitted to the bar at the March Term of the Court of Common Pleas in 1851, and for a year or two following filled the position of Clerk of the Salem Police Court. Fortunately for him and the profession, he was soon relieved from a service which could afford little scope for the exercise of his powers; and in 1853 he entered upon that course of active labor at the bar which ended only with his life.

Mr. Ives brought to his chosen work rare native and acquired gifts. He was endowed with intellectual abilities of a high order,—quick perceptive faculties, a capacity for acute reasoning and of swiftly reaching conclusions, remarkable powers of observation, a singularly ready and retentive memory, and that greatest of all mental gifts, the ability to concentrate every faculty of the mind upon a given subject or point.

With these natural endowments, trained and expanded by early studies, especially in the science of mathematics, of which he was always fond; by varied reading and generous culture, with a sanguine temperament, eager, ardent, hopeful, and brave; with an admiration for his profession as warm as that of a lover, and a belief in its high mission as profound as that of a devotee in his religion,—he began, and for thirty years pursued, a career which had had few parallels in the history of the Essex Bar.

There was no branch of legal practice in which he did not participate, and in which he did not seem equally at home. In jury trials, both on the civil and criminal sides; in the argument of questions, to the full court; in cases involving commercial law and the law of real estate; in equity and

probate and insolvency; before city councils and committees of the Legislature,—in whatever usual or novel cause could arise in a general practice, he seemed always ready, and never at a moment's loss as to the principles which governed, or the line of conduct to be pursued. If he had graven "*Semper paratus*" on his crest, the legend would have been no empty boast.

During a quarter of a century there was hardly an important suit in Essex County,—certainly not in his own part of the county,—in which he was not retained upon the one side or the other. His life may be said to have been spent in the court-room: nothing there escaped his observation. He was nearly as familiar with the dockets as were those who had them specially in charge,—knew every claim which was in litigation, and the details of every action which was tried,—so that when in his own practice there came a case which was apparently of novel impression, and without a precedent, he could almost always furnish an analogy, or some ruling or adjudication which threw light upon the point in dispute, and illumined the way to his own success.

As a jury-lawyer Mr. Ives had in his day few equals. He delighted in the work, and courted rather than shunned the sharpest encounter. Thoroughly master of his case, he would bring out in full relief its strongest points, while with matchless ingenuity he would unveil and expose the weak points of the opposing side. Equally skilful at fence, and strong in logic; alert, watchful, eager, intense; in his powers as a cross-examiner unsurpassed, and in the discussion of questions of fact, clear, sensible, cogent and convincing,—his success with juries was as marked as it was deserved. He did not compel verdicts by the persuasive and controlling powers of eloquence. He had not that temperament or genius that could rise to the highest flights of the orator, and which by sympathetic appeals to human passions can override the stern realities of fact, and make the worse appear the better reason. His success was due to careful preparation of his cases; to searching analysis of the facts and full control of

the law applicable thereto, to keen observation of men; to unflinching labor in acquiring a familiar knowledge of the science, art, or business involved in the controversy; and to fair, square, vigorous, and manly argument upon the real merits of the case. Those who have observed his conduct of an important cause, in which the issues turned upon the nicest questions of surgery or medicine, or practical problems of mechanical skill, have marvelled not only at his easy familiarity with the nomenclature of the subject, but at his apparent command of its principles and fundamental laws, which enabled him to detect and expose empiricism, charlatanry, and fraud.

But, on the whole, his well-recognized eminence and achievements as a lawyer were due not so much to his superior attainments or greater abilities in any one direction, or to any superlative or phenomenal or occasional excellence, as to the even poise and constant readiness of his powers, perhaps never soaring above a certain mark, but that a high one,—certainly never falling below it;—and because he was well-armed at all points, *totus, teres, atque rotundus*, and did everything which he had to do faithfully and well.

It has often been remarked that the fame of the most successful lawyer is but short-lived, and rarely survives the generation with which he is contemporaneous. But the influence of such a lawyer may live on in the lessons which his example teaches to his associates, and the good results may be widespread and long-enduring. There were certain respects in which Brother Ives was a most worthy exemplar. Though special pleading is well-nigh an obsolete science, yet how much of success in practice is even now dependent upon the skilfully drawn and accurate declaration and answer, and the many interlocutory writings which the emergencies of a case may demand. In this particular Mr. Ives will long be a model for those who succeed him. Not only was he wonderfully facile, prompt and ingenious, but in language as clear and concise as his penmanship was neat and elegant, he would put upon paper the exact statement of his case or of

the questions in dispute; and the verdict of the jury or the finding of the court would be the logical corollary of the written pleadings in the cause. While his facility and accomplishments in this regard were unique, and may well challenge competition in this day of loose and slovenly pleading, his neatness, precision, accuracy and logic will furnish precedents for better methods, and help lead to a truer and more correct practice.

There was another respect in which Mr. Ives' conduct as a lawyer may well serve as a pattern and an example. He had the highest sense not only of professional courtesy, but of professional honor and honesty. In all his dealings with his brethren he was liberal, accommodating and kind, never punctilious or exacting, practised no low or unworthy arts, never resorted to a trick or subterfuge, fought hard, but always in a manly way; and in his dealings with the Court kept ever in mind that significant part of his oath, that in the office of an attorney within the courts, he would conduct himself with all good fidelity, as well to the courts as to his clients. And thus it was that there was no concealment or evasion, no attempt to obtain a favorable ruling by a suppression of adjudicated law or known facts, and never a tacit consent to a triumph which might be secured through a misapprehension or misunderstanding on the part of the judge; for he had that noble pride in the Bench which every true lawyer will cherish, and felt as a personal affront any imputation upon its unerring accuracy and absolute verity. And thus it was that, after a long and heated trial, arousing every energy, sharpening every faculty, exciting every emotion, and ruffling even the best governed temper, he would sit calmly down and draw up a bill of exceptions or a report of the case, so truthfully and fairly presenting the points at issue as to require little if any emendation, and secure at once the acquiescence of opposing counsel and the approval of the Court.

Mr. Ives prided himself upon being a lawyer, and only a lawyer, having a profound conviction that no calling was

more useful or honorable, no position more exalted, or having higher responsibilities or nobler duties. And so he had no political aspirations, and never desired or held any public office, except as a member of the School Committee of his native city, the duties of which he for several years discharged with punctilious fidelity and in grateful payment of what he regarded as a sacred debt. But as a citizen he was thoughtful and earnest, having decided party affinities, yet independent and fearless in the exercise of his own private judgment of men and measures. In social life he was affable, sprightly and entertaining. Full of anecdote and incident, sweet-tempered and unselfish, vivacious and mirthful, he charmed by his frank manners, and won confidence and regard by his uniform rectitude, sturdy manliness, and unfailing good sense.

Mr. Ives had by nature a vigorous constitution, and great capacity for labor. For many years he knew no infirmity and sought no rest from his work. In summer and winter, year after year, from one court to another, from term to term, he toiled on, now going to this jury or judge, and then to the other, apparently without weariness or fatigue. His brethren wondered at his untiring energy and his powers of endurance. But the bow always bent must lose at last its elasticity. Nature abused will have her sure revenge, and the inevitable day came of weakness and waning strength. Too late now the enforced rest, and foreign travel, and milder climes. Alluring but vain promises of convalescence, and the indomitable will and unequalled courage of our friend brought him back once and again to his work. At the last September Term of the Superior Court he labored for three weeks in the trial of several important causes; and though unable to be upon his feet, and by the kind indulgence of the presiding Justice examining witnesses and addressing court and jury while seated, his mind never seemed more active, his perceptions quicker, his grasp more firm, his signal ability as a jury lawyer more marked and conspicuous. But it was the last of his well-fought fields. Then followed the few months dur-

ing which he lingered, now in hope, oftener perhaps in doubt, but never despairing, still with interest unabated in the work he had left, eager to hear and know of all that was transpiring in the courts, and, like the stricken soldier, listening intent for the sounds of the far-off battle, in which he could no longer wield a weapon or strike a blow,—and then, soothed by the kind ministrations of domestic love, and, as we may well hope, with an unfaltering trust in the Divine love, in which he had always humbly believed, he went to his eternal rest.

And this, may it please your Honor, was the man and the brother so lately in the midst of us, so full of vital energy and force, so eager and earnest, so cheerful and brave, so in the van of every forensic encounter, so much an integral part of our professional life, the echoes of whose voice yet linger within these walls; to whom the Essex Bar, of which for a generation he was the pride and ornament, and the Bar Association, of which for many years he was the chosen head, tender their humble tribute, and respectfully ask that, for his memory and example's sake, it may have a place upon the records of the Court.

The request of the memorialist was seconded by Hon. William D. Northend, President of the Association, in the following words:—

May it please your Honor:—Of Mr. Ives it is hardly necessary for me to speak in the presence of the members of this Bar, who all knew and loved him so well. He was a man of great ability and untiring industry. Few men in this county ever tried more causes, or tried them better, and no man was more honorable in the performance of every professional duty.

In behalf of the Bar Association I cordially second the motion of Brother Abbott, that the memorial be entered upon the records of this Court.

Hon. Daniel Saunders then addressed the Court as follows:—

Of the character of our late Brother Ives as a lawyer, no one of the Bar needs any statement of mine to confirm his opinion. He was *the* prominent lawyer in all cases of importance in our county. His knowledge of the fundamental principles of laws, his learning in its technicalities, and his ready application of those principles in the trial of causes, made his services of the highest importance when much was at stake. And when parties found they could not settle their controversies without the aid of the courts, they sought the assistance of Mr. Ives, and very frequently one party, however diligent he had been, found his adversary had gained a decided advantage by a few hours' earlier retainer. His ability at once to see the weak as well as the strong points of a case, his power of attack. his quick perception of the best point of defence, made him the equal of any man I ever knew in the conduct and management of a suit at law. His constant practice, his great ability, his success, and his ever fair and honorable conduct are known to every member of the Bar. His works and their results are the only eulogy he needs as a great lawyer.

But I desire to say a word of him as a man. Since he came to the Bar I have been most intimately acquainted with him. I have seen upon many occasions the very recesses of his heart, and have found there the warmest feelings of friendship, and a nobleness and kindness which will make his memory more cherished and enduring with me than the recollection of his great ability as a lawyer of the highest rank.

In the trial of causes he was ever persistent and aggressive. Personal friendship with his brother lawyers never came between him and his duty to his client; but when the contest was over, his cordial greeting showed that the sparks evolved in the clash of arms contained no personal heat, and the friendship of the past had lost nothing of its warmth. Our respect and confidence in him had been increased with each successive struggle in his always fair and honorable warfare.

I saw him frequently during the last months of his life, when he was suffering not only from physical pain, but also

with that pain of the mind which enforced confinement always brings to so active a laborer as he had been. And in all those weary months he displayed a resignation and fortitude that were the legitimate outcome of that character which was best known to his most intimate friends. His warm heart and manly character will ever make his memory dear to his associates; his brilliancy, his learning, and his great ability will add a new page to the history of the eminent men of the Essex Bar.

He was followed by HON. CHARLES P. THOMPSON, who said:—

MAY IT PLEASE YOUR HONOR:—I trust I may be pardoned for adding a word to the very eloquent, appreciative, and just tributes paid to the memory of our departed brother. Mr. Ives I have known for a quarter of a century intimately, as a lawyer and a man, and to set forth his character we must describe a model lawyer and a model man. The facility with which he dealt with the most intricate questions of law and fact has been a marvel to all who have been associated with him.

No lawyer was ever better equipped for the successful practice of his profession. He was most familiar with all matters of practice, as well as of law, and had a capacity for acquainting himself with the law and facts of a case rarely equalled; he had a high standard of professional conduct, and never departed from it; he devoted his entire life to the duties of the profession he so dearly loved, and although he has died comparatively young, few men, however long their lives, have performed so large an amount of labor as that performed by him. He was a most lovable man, kind-hearted, generous, and true, always ready with kind words and friendly aid; and it is seldom, indeed, that the death of any man causes so great and so manifest a vacancy in the department in which he has moved. No man can be more missed than he is in the courts, his chosen and successful field of effort. In his death we have all lost a personal friend, and the pro-

fession one of its most useful members, one of its brightest ornaments,—and to no one can those words of divine eulogy be more appropriately applied, "Well done, thou good and faithful servant."

Upon the conclusion of Mr. Thompson's remarks, CHARLES A. BENJAMIN, Esq., said:—

MAY IT PLEASE YOUR HONOR:—I desire to express, as I best may, my sorrow for the death of our late associate, Mr. Stephen B. Ives, not only as he was the head and ornament of our Bar and a prominent and valued citizen, but one for whom I entertained the warmest friendship. Of his professional services, so well rendered to the courts and his clients, others have already well and fitly spoken, and I can add little to the weight of their words. Possessed of the highest and best attributes of the advocate, he used them with a wonderful power, skill, and effect; armed and equipped at all points he battled stoutly for that side of the case that he prosecuted or defended, and presented a remarkable example of a man gifted with great power and talents, which he knew well how to utilize, and over which he had full command. To the younger members of the Bar his trials of causes were a constant source of delight and admiration, and were of inestimable value as a guide and inspiration to their own efforts in that direction, while his generous and open character and kind and unassuming manners endeared him to all.

And this example will not be lost, though the great exemplar has gone. One of the saddest things connected with the death of some men is that they are forgotten; the places and the men that knew them once know them no more, nor remember them. Happy then is that man who has done those things the memory of which shall live after him; who, like our deceased friend, has left a record to which men shall turn with ever increasing pride and appreciation.

It was my painful privilege to have seen Mr. Ives upon more than one occasion during his last illness; and I see him today, not only as he stood at the Bar of this court-room con-

tending with living opponents, but also as he lay upon that bed of death, fighting the last insidious foe; and while we, his juniors, may well desire to emulate his professional career I hope it may be given to all here to meet that dread ordeal with the cheerfulness, serenity, and high courage with which he sustained it.

Mr. Leverett S. Tuckerman, spoke as follows:—

May it please the Court:—After the very full sketch of Mr. Ives to which we have just listened, it would ill become me to occupy the time of the Court at any considerable length with further remarks on the subject.

I am prompted, however, by personal motives, and because I know that in so doing I shall represent, in a measure, the feelings of those members of the bar who are of about my own age and standing, to add a few words to what has been said, chiefly with reference to Mr. Ives' relations to his juniors in the profession during the later years of his life, in the course of active practice both in and out of the courts.

From a purely professional point of view, the fact which perhaps strikes us most forcibly is the loss of the most familiar figure and voice from our court-room during the sessions of the courts. Probably in no county of the Commonwealth has there been of recent years any one attorney who has been retained, and actively engaged, in so large a proportion of the causes on the dockets of the higher courts, as was Mr. Ives in this county. On the opening day of a term his voice was heard in answer to the call of almost every cause of importance, and of a large proportion of those of less magnitude; while, during its progress, it was rarely that one could visit the court-room without finding him present, and probably actively engaged in the case on trial, or, if not that, occupied with discussion and preparation of that next to come on.

His voice, as well as his court-room manners, if I may use the expression, which in every lawyer tend to become matters of fixed habit, were as well known to his brethren of

the Bar as they became impressed on all in attendance,—judge, jurymen, and officers,—during the progress of a term. His quick, nervous movements, his ready smile when pleased, his almost fierce glance and frown when annoyed, his keen questions in examination, his emphatic habits of statement and gesture in argument,—all these are as readily recalled as if heard today, or delineated in a portrait on these court-room walls. As is naturally the case with every leading practitioner, he has been taken as a model for more or less close imitation by a large proportion of those now in practice here; and for this reason his influence will be felt in this county long after the causes in which he was engaged have been forgotten.

When I first came to the Bar, nearly twelve years ago, it was my fortune to be associated with lawyers who were the contemporaries and the frequent antagonists of Mr. Ives, and for that reason I often found myself in opposition to him. It is pleasant to be able to say that, under such circumstances, I cannot remember ever having had occasion to complain of an unkind or discourteous word or act from him, even in the heat and excitement of a trial. He tried his cases for all that they were worth, and he never gave away an advantage, or spared a comment on the evidence which he thought might fairly be taken or made in behalf of his clients, but he always abstained from intentionally slighting or wounding the feelings of an opposing counsel, and especially of a junior. In his readiness to oblige, as well as in his high sense of honor and scrupulous fidelity to all professional engagements, he set an example worthy of all imitation.

Later on I happened to be more often associated with him, and acted as his junior in several matters of some importance. Under such circumstances he was found to be invariably kind, courteous, and considerate of the opinions of an associate. While a patient listener to all material information concerning the case in hand, his wonderfully quick apprehension of facts, and his ready knowledge of the principles of law involved, rendered it possible to give him the

necessary instructions in a very brief time. His retentive memory served to carry the facts from the time of instruction to the time of trial, without the loss of details, over long intervals, perhaps of months, or even years ; while at the time of trial one could not help feeling confidence in his ability to overcome almost any possible obstacle.

Of the high degree of skill, and of the prominence which Mr. Ives attained in all departments of his profession, it is needless for me here to speak. Even if they cannot be considered matters of common knowledge in this county, and almost in this Commonwealth, what I could say of them would add nothing to the impression conveyed by the appreciative sketch which we have already heard.

For the last few years of his life, I think I can claim to have been favored with a considerable measure of his personal friendship, and from my familiar intercourse with him could give testimony, if any were needed, to the very high degree of culture and general information with which he was armed, in matters entirely out of the line of his professional studies. Add to that his affectionate disposition and his kindly and genial temper, and one can in some degree imagine what a privilege was that of being on terms of friendship with him, and can realize what a loss has been suffered by his friends beyond that which all his professional brethren feel.

What natural talents each may have are born within himself; the use which each shall make of them, it is within his own power to determine. Any one of us may well be proud if, at the close of his professional career, he can, in looking back, feel that he has made as good use of his own talents as Mr. Ives made of the great ones which were given him. The lessons of his life are chiefly for us, his juniors, who are left to carry on the work ; and without unavailing regrets, let us be thankful for and endeavor duly to profit by them.

Chief Justice Morton then addressed the Bar in the following words:—

Brethren of the Bar:—The death of a man so prom-

inent and useful as our Brother Ives cannot but be deeply felt by the community in which he lived. It is a special loss to the courts and to the Bar of this county, with which he was identified for so many years. If we look back for the last thirty years we find very few terms of either of the two principal courts of the Commonwealth held for this county, in which he was not an active participant in the business and labors of the terms.

It is not necessary that in this presence I should speak at length of his ability and success. He was admitted to the Bar in 1851. His mind, of great native ability and acuteness, had been trained not only by a successful collegiate course, but by a useful experience as a teacher for a few years, and he attained an immediate success in his chosen profession. His growing success was quickened by a substantial addition to his practice, when his teacher, associate, and friend, the late Judge Lord, was taken from his position as the leader of this Bar to a seat on the Bench. That distinguished jurist has often told me that when he left the Bar such was his confidence in the ability of Mr. Ives, though he was then a young man, that he had no hesitation in recommending him to his numerous clients as a suitable person to take charge of their varied and important interests. You all know how well this confidence was justified by the result. Mr. Ives soon conquered a place in the front rank of the Essex Bar, a position of which any lawyer may well be proud; and he retained it to the day of his death. No man could reach and retain such a position unless he was endowed with great qualities,—with intellectual strength, industry, eloquence, fidelity to his duties, and honesty.

It always seemed to me that one of the chief elements of Mr. Ives' success was the intense earnestness which he threw into all his work. He was an enthusiast in his profession. Early and late, in season and out of season, he devoted himself to its work, admitting no rival in his affections, allowing no external interests to divert his mind and strength from its pursuit.

The necessary result of his marked ability, his extensive learning, his eloquent command of language, his zeal and earnestness, was that he was a successful advocate in the trial of cases before a jury, surpassed by few, if any, of his contemporaries. It must be added that, notwithstanding the zeal and intensity which he threw into a case, he was always fair and candid. Many of you, brethren, have often been obliged to meet him in forensic contests; you always knew that in him you would meet a worthy antagonist, armed at all points, whose attack would be vigorous and impetuous; but you never needed to guard against anything like trickery and chicanery, for you knew that he scorned such means of success.

The same characteristics appeared in his arguments of questions of law. He was thorough and exhaustive in his researches, and able and acute in his analysis of cases. He never concealed or overlooked decisions which bore against his views, but always called them to the attention of the Court, and dealt with them manfully as best he could. Occasions frequently arise when it is convenient and necessary for the Court to seek the advice of members of the Bar upon questions of practice and procedure. Upon such occasions we have always looked to Mr. Ives as one of the safest of advisers, well knowing that he would observe all due fidelity to the Court, as well as to the Bar and his clients. I feel deeply that in the death of Mr. Ives the Bar has lost one of its ablest and most useful members, and the Court has lost one of its most competent and faithful assistants in its great work of administering justice.

Impressed with the truthfulness of the portrait which you have drawn of him in your memorial,—knowing that your action is not a mere form, but is an earnest tribute of respect and affection,—I most heartily concur in the sentiments expressed by you, and in accordance with your request shall order that your memorial, together with a memorandum of these proceedings, be entered upon the records of the Court.

ALFRED A. ABBOTT.

At a meeting of the Essex Bar Association held October 28, 1884, Messrs. William C. Endicott, William D. Northend, Daniel Saunders and Charles P. Thompson, were chosen a committee to prepare a memorial of Mr. Alfred A. Abbott, to be presented to the Court.

Memorial.

In the Superior Court held at Salem, on Monday, December 8th, 1884, Chief Justice Brigham, and Mr. Justice Pitman who was presiding, on the Bench. Mr. William D. Northend, President of the Essex Bar Association and member of its Committee, read the following memorial:

May it please your Honor:—Mr. Alfred Amos Abbott, who for so many years performed in the most exemplary manner the important duties of Clerk for this County of the two highest Courts in the Commonwealth, departed this life, after a brief illness, on the twenty-seventh day of October last.

At a meeting of the Essex Bar Association, held October 28th, a committee was appointed to prepare some suitable expression of the sentiments of the Bar, to be presented to this Court, with the request that it be entered upon its records as a lasting tribute to the services and virtues of our deceased brother; and the Committee respectfully presents the following memorial.

Mr. Abbott was born in Andover, in this county, May 30th, 1820. He was a son of Hon. Amos Abbott, who represented the Essex North Congressional District in the House of Representatives of the United States from 1843 to 1849. He received his early education at Phillips Andover Academy, and entered Yale College in 1837. At the end of his Junior year he left Yale for Union College, from which

institution he was graduated in 1841. Immediately upon his graduation he commenced the study of the law in the Dane Law School, from which, in January, 1843, he received the degree of LL. B.

From that time until his admission to the Bar in 1844, he studied in the office of the late Judge Joshua H. Ward. Soon after his admission, he commenced the practice of the law in the part of Danvers now Peabody, where he resided until the time of his death. He represented the town of Danvers in the Legislature of the Commonwealth in 1850 and 1852, and the County of Essex in the Senate in 1853. In the same year he was elected a member of the Constitutional Convention of the Commonwealth, and appointed District Attorney for the Eastern District, which comprised Essex County. He held the office of District Attorney until January, 1869. He was appointed Clerk of the Courts for this county, September 27th, 1870, upon the death of Mr. Huntington, and was the same year elected for the unexpired portion of the term, and was afterwards twice re-elected to the office, in which he remained until the time of his death. He also held important offices in his adopted town, and was an active member of several associations. In his nearly ten years of general practice before his appointment to the office of District Attorney, Mr. Abbott had secured a large clientage, and had tried many important cases in the higher Courts. In this time he had developed such ability and aptness in the Courts, that his friends indulged in the highest hopes of his future success and eminence in his chosen profession. But the duties of the office of District Attorney, after his appointment, occupied a large portion of his time, which interfered seriously with his practice in the civil Courts. But in the time that intervened between the close of his duties as District Attorney and his appointment of Clerk of the Courts, his general practice was large. But this was terminated on his appointment to the clerkship. Consequently Mr. Abbott's professional reputation was earned largely in his performance of the duties of the two important offices connected with the

profession which he held for such long periods of his professional life. But in the performance of these duties he afforded abundant evidence of his high qualities and character as a lawyer.

No man at the Bar had formed for himself a higher ideal of what the conduct of a lawyer should be, or cherished a greater respect and reverence for the profession than did Mr. Abbott. He was sensitive of its honor, and during the entire period of his professional life no one was more scrupulous than he in conforming his practice and conduct to the ideal he had formed, and no one in the performance of the duties of his profession afforded a better example to the younger members of the Bar. He had a remarkable presence. Possessed of a fine physique and courteous manners, he attracted to him, and commanded the respect of all who sought his advice or who had business to transact in connection with the offices he held. His great aim was to do everything well; and upon his appointment to the offices he held, he devoted himself with scrupulous and conscientious care to a full understanding and thorough performance of the duties they required. After his appointment to the office of District Attorney, he studied carefully and exhaustively the criminal law and became master of it. His indictments were accurately drawn and his cases fully prepared. In the trial of cases, he exhibited great power. His cross-examinations of witnesses, though seldom long, were very thorough and effective. His addresses to juries were strong, logical and eloquent. He was always ready to discuss questions of law that were raised on a trial, and was familiar with all the decisions, to which he could refer without delay. By the Bar, until the time of his death, he was considered as authority on all questions of criminal pleadings and practice. But thorough and efficient as he was in the trial of criminal cases, he performed, as satisfactorily, the other and not less important duties of the office. He exercised great judgment and wise discrimination in the commencement and prosecution of proceedings against alleged offenders. His aim was to do nothing more and nothing less

than the cause of justice required, and never, to seem even, to press prosecutions for the purpose of achieving personal triumph. Those familiar with criminal proceedings in our courts will understand the responsibility imposed upon, and judicious care required of a prosecuting attorney, as in many classes of cases the grand jury cannot be expected to understand fully all the niceties of the law, and must depend largely upon the advice of the prosecuting attorney. Besides, there are often over zealous officers and vindictive prosecutors, who urge the finding of indictments upon doubtful or insufficient evidence, and on the other hand, friends of the accused, who plead for immunity or leniency. These require, in a prosecuting officer, courage, firmness, impartiality, and sound discretion. These qualities Mr. Abbott possessed in an eminent degree. Of this there can be no stronger evidence than the fact that, during the long period he performed the duties of his office as prosecuting attorney, he had the entire confidence of the Courts, the Bar, and the people of the county.

The manner in which he performed the duties of the office of Clerk of the Courts is known to every member of the Bar. He acquired a thorough and familiar knowledge of practice in all the civil, equity, and criminal Courts, and great facility in applying this knowledge. Such was the confidence of the Court and the Bar in Mr. Abbott's familiarity with all the rules of practice, that very much was referred to him without instruction or discussion. The arrangement of the docket and trial lists was largely entrusted to him by the Court. He sought information of the different cases on the docket, so that he was able from day to day to prepare trial lists of cases, always sufficient for the employment of the Court, yet not so large as to require parties to be in attendance an unnecessary length of time awaiting trial. He was faithful to the Court, and considerate to the bar and parties to suits.

In a letter to a committee of the legislature which was considering the subject of the salaries of the Clerk of the Courts throughout the Commonwealth, in 1879, Mr. Abbott stated the proper qualifications for the office in the following words:

"May I not now say to the committee that no man is fit for the places we occupy who is not at least a respectable lawyer? I will venture to add that no man can discharge their functions according to the full measure of their usefulness who is not something more and better than this; who to a sufficient degree of clerical accomplishments, an experimental knowledge of wide and varied practice, and a familiarity with the routine of business in the different courts, does not add aptness, facility, promptness and method, critical accuracy and generous culture, patience and good temper, with firmness and decision, and withal that affability of manners, courteousness of address, and dignity of presence and demeanor, which can do so much toward securing respect for judicial proceedings."

No words can better or more happily portray the qualities and accomplishments possessed by Mr. Abbott. He was the model Clerk of Courts of the Commonwealth. He may have had his peer, but never his superior, in that office.

But Mr. Abbott was something more than a lawyer or Clerk of the Courts. He was a man of broad culture and large knowledge and experience outside his profession. He read the best books and was a thorough student of English literature. His occasional public addresses were models of excellence. His style was elegant and graceful and his language most felicitous. He had the faculty of expressing his thoughts in the clearest and most eloquent manner, without any seeming extravagance or redundancy. He had a very sympathetic nature, his delivery was very forcible and impressive, and as an orator he had no equal in the county since the days of Rufus Choate. If he had sought distinction in the general practice of his profession, there was no place at the Bar or on the bench to which he could not have justly aspired; or if he had cherished political ambition, he had the qualities which would have insured him a high position and reputation as a statesman. But Mr. Abbott's tastes led him to prefer a more quiet and peaceful life. He was happy in his occupations, and felt greater satisfaction with the results

of his varied usefulness in the life he led, than he would have at the applause, which the honors and positions he well knew were within his reach, could have given.

To the interests of the town of his adoption, Mr. Abbott gave his best thoughts and efforts. For forty years his influence was felt in all the important affairs of the place. He took an active part in the town meetings, and his fellow citizens appreciated his controlling wisdom and prudence on the various important and difficult subjects the town was called upon, in that time to deal with. He was actively connected with the Peabody Institute from the time of its foundation until his death, and for many years was President of its board of trustees. He took a deep interest in its success and watched its growth with sedulous care. He remembered always that it was instituted for the benefit of posterity as well as for the present generation, and he was very conservative in his views regarding the use of its income. To his influence the present financial standing and prosperity of the institution are largely due.

In social life, Mr. Abbott was one of the most genial of men. His mind was stored with information, and in the company of his friends no one was listened to with more attention or pleasure. His friendships were strong and enduring. By his kindness and words of encouragement he endeared himself to all, and especially to the younger members of the Bar.

There is a delicacy in invading the sanctity of home life. It is sufficient to say that he was a dutiful son, a loving husband, and a tender and affectionate father. It is difficult to appreciate his loss to his family circle, of which he was the light and the joy.

Our friend and brother, in the autumn of his years, with the falling of the leaves and the fading of the flowers, passed peacefully to his rest. Neither age nor disease had impaired his faculties or dimmed his eye. We remember him only as the strong man. It was at the last April term of the Supreme Judicial Court that he, in the full tide of life and

vigor, pronounced those beautiful eulogies upon our departed brothers, Lord and Ives. It is but a few weeks since he sat at this desk, apparently in the enjoyment of robust health. Indeed, "in the midst of life we are in death."

May it please your Honor, I now move in behalf of the Essex Bar Association, that this memorial be placed upon the records of this Court.

Mr. Daniel Saunders then spoke as follows:—

Mr. Abbott and I were born in the same town, studied in the same schools. He was a playmate of mine in boyhood, a companion in youth, and a warm and intimate friend during life. My life long knowledge of his worth and ability corroborates all that has been so justly and aptly said of him in the memorial just read. I do not rise to add to what has been so well said, but simply in a few words to give expression to the esteem and affection which I have always entertained for him.

When a few months since, our brother Abbott rose in this Bar, and with voice modulated by the deep feelings of his heart, read, with so much pathos, the eloquent tribute prepared by him to the memory of our departed brothers, Judge Lord and Mr. Ives, we felt that we had still left amongst us, one upon whose shoulders the mantle of our great departed leaders would not hang loosely; that we had one still left who could uphold the prestige, the dignity and honor of our profession, with a grace, power and eloquence, equal to that of any of the great men whose names had been so conspicuous in the past history of Essex County. None of us who then listened to his eloquent words and looked upon his manly form, dreamed that so soon would he leave us for the company of those whose lives and characters he had so faithfully and justly portrayed in the memorial, and which he so feelingly read.

We hoped that many years of useful life were before him; but his work was nearly done. The finished tribute to the memory of those from whom he had received, and to whom

he had given so much of professional and personal love and esteem, was a fitting end of the labors which made his life so dear to his friends.

Mr. Abbott in his boyhood was frank and open hearted, and a general favorite with his companions. He was fond of the sports of boys, in which he took an active part, never, however, neglecting the duties of study for the pleasures of play. He was prompt at recitation and seldom unprepared. He was noted for the correctness of his translations of Latin and Greek, which he rendered into English in language almost as classical as the original. His early study to express his idea in fitting words, laid the foundation of his future great command of language.

When practising at the Bar, he was a safe counsellor and a brilliant advocate. His modesty, often the companion of great ability, led him to distrust the strength of his natural powers, and to prefer the routine of office work, rather than the strife and struggle of jury trial in civil cases. If there were at the Bar those with more exact technical knowledge in the science of law, if some more familiar in case and authority, yet no one was more familiar than he in the knowledge and practice of those broad principles which have made law the hand-maiden and servant of justice. No one surpassed him in power and eloquence before a jury, when the case and the occasion called out the full measure of his ability. Few men could touch the sympathies of a jury with a more delicate hand, or hold their attention more closely than he. When feeling strong in the justice of his cause, no one was more impressive, and no one had greater power in satisfying a jury with the honesty of his convictions.

He was familiar with the best authors, ancient and modern, and had stored his mind with the thoughts of the best writers, to an extent that made him not only apt at quotation, but an authority in literary matters. Of his social qualities it need only be said he was best appreciated by those who knew him most intimately. Of his services as District Attorney of this district, of his fair mindedness, of his integ-

rity, of his high sense of honor and responsibility in office, of his able administration of the duties of the Clerk of the Courts of this county, I need say nothing. They have been faithfully set forth in the memorial, "a fitting eulogy to worth," just read, and to which little can be added. Even if nothing had been said, the ability, faithfulness and devotion to duty which he displayed in these offices have been patent to all who had occasion to be present or to practice in our Courts.

If he had remained at the Bar, his name would have been identified with the most important cases which required eloquence and ability in the presentation of their merits to a jury.

One of the leading traits of Mr. Abbott's character, and one which more than any other contributed to his success, more than his innate ability, was the honest purpose and indefatigable labor which he brought to bear upon any matters he had in hand. While many supposed his brilliant productions, as shown in his addresses upon public occasions, were the facile flow of a ready pen guided without much mental effort, yet those who knew him most intimately, knew that these products, so strong and finished in all their parts, were the result of labored thought and hard conscientious work.

The talents which God had given him had been improved with constant care, and added to from time to time by honest and faithful use; and who shall question that death was but the messenger to call him to new fields of usefulness into which he has entered with the welcome salutation of the Supreme Judge and Ruler of all things—"Well done thou good and faithful Servant."

In behalf of the Bar, I second the motion made by Mr. Northend.

Mr. Charles P. Thompson then addressed the Court as follows:—

May it please your Honor:—I desire to add a word to the expressions of appreciation and regard already pronounced for the character of our deceased brother. When I

came to this Bar in 1857, Mr. Abbott held a position of marked and acknowledged prominence as an accomplished lawyer and an able and efficient District Attorney, and it was soon my fortune to witness and feel his power in a trial occupying twelve days, which he closed with an argument of six hours, remarkable for its logic and eloquence, which largely increased his growing reputation. He was always found fully equal to the emergency, and the more difficult and intricate the case, the more conspicuous were his rare accomplishments. He had a memory which did not permit any fact to escape, a clear perception of the true application and just weight of the evidence, and a facility of arrangement, which made every circumstance tell most forcibly to sustain his theory, combined with a power of expression, a manifest sincerity, and a confidence in his positions, that made him a most formidable opponent, and a most successful prosecuting officer.

His integrity of purpose, sound and discriminating judgment in the performance of his duty, cannot be too highly praised. His office of District Attorney brought him into a favorable acquaintance with the people in all parts of the county, and his services were frequently sought in civil cases of importance.

The duties of District Attorney occupied so much of his attention that his civil practice was not so large as that of some other members of the Bar, still, the number and importance of his cases were such as to make for him an honorable and profitable civil practice. He brought to the management of these cases the same aptness for investigation, sound judgment in selecting the course to pursue, and ability in presenting his case to the Court and Jury that were so conspicuous in his trial of criminal cases, and he justly held a high rank as a civil as well as a criminal lawyer.

The ability and fidelity with which he performed the delicate and responsible duties of Clerk of the highest Courts of the Commonwealth have been fully recognized by the Courts, the Bar and the people. Towards the members of the Bar

he ever manifested the kindest consideration and the most accommodating spirit, and in their efforts and success he always took an active interest.

He had a high standard of professional duty, and to such a standard he endeavored by precept and example to bring the conduct of the Bar. He has been for more than a generation a highly honored and valuable public servant, with the constantly increasing esteem and confidence of all, and his memory is justly entitled to our veneration.

As a private citizen, he was no less useful and honored than as a public officer. We all know how justly proud of him is the town of Peabody, in which he commenced practice, and in which he resided from his entrance into public life up to the time of his death, and how alive he was to every matter affecting her honor or her interests.

Those who attended his burial service learned how endeared he was to his pastor and the members of the Society with whom he worshipped, and how great a loss they have sustained in the death of their distinguished patron and friend. Mr. Abbott had a most sacred regard for the Bible, the church and its ordinances, and no one was more pained than he at anything like irreverence for them. He regarded our Christian civilization as the hope of the world, and believed it to be the duty of every friend of humanity to aid in its illustration and development.

He was a man of generous culture, and rare attainments. When we last saw him in Court, but a few days before his death, he was a model of manly power, health and vigor. Who of us then for a moment dreamed that we should never again behold his dignified, kind and friendly presence in this temple of justice?

Although called from earth before he had reached the allotted age of man, yet he lived long enough to perform the full measure of work of a true and noble man, and to discharge all the duties growing out of the relations he sustained to his fellow-men in a manner most satisfactory to all.

He earned an honored name based upon real merit, and

possessed noble virtues which endeared him to all who knew him. We cannot mourn for him. The promise that it shall be well with the righteous gives us the fullest assurance that it is well with him, that everlasting life is his.

He was followed by MR. HENRY F. HURLBURT, who said :—

MAY IT PLEASE YOUR HONOR :—Words are inadequate to express my feelings for the loss of our friend and brother. When I came to the Bar, Mr. Abbott had ceased to be District Attorney for this County, but the ability with which he filled that office was so great that no one to this day can speak of that office, without the mind associating him with it. But I desire to speak of Mr. Abbott from the time I first knew him, then occupying the office of Clerk of this Court.

The most important period of a young lawyer's practice is the beginning. He is assailed with doubts and fears, lest he may commit some mistake detrimental to the interests of his clients; he may know what is necessary to do, but the great question is, how to do it. In such a case, he seeks some kind friend, upon whom he can rely, to advise him, and he has always found such a friend in Mr. Abbott.

His advice and assistance were always kindly given, and always relied upon. He always took a great interest in the young men of this Bar; he was their friend and counsellor, and, also, their kindest critic; he would often, in the kindest terms and manner, talk with them, criticising some mistakes, and correcting some error of judgment. He seemed anxious to aid them in arriving at perfection in their chosen profession, and perfection was his only standard. Not only was he their kind friend and adviser, but their counsellor; often when cast down by defeat in some case that the young practitioner had bent his hopes and energy upon, and, perhaps, feeling that the cause of his defeat was on account of some lack of judgment or ability on his part, then would Mr. Abbott, calmly and kindly, go over the cause with him, and, with keen mind and masterly ability, analyze the whole case, ex-

posing to the young lawyer the defects of his cause, showing him that the fault was not with the lawyer, but with the cause. Often has he done this, and no young lawyer who received the benefit of this analysis, ever left his presence without renewed energy and hope.

He would speak in praise when praise was due, and kindly criticise where criticism was needed. Such was Mr. Abbott to the young lawyer; such he was to me. His loss is to us, a great one, and his memory will always be cherished by me for the many acts of kindness I have received from him.

Mr. William H. Moody then said:—

May it please your Honor:—No eulogy of our friend and brother can be complete, no estimate of his character, and of the influence which he has exerted upon the Bar of this County, and thereby indirectly upon the community, can be at all adequate, which does not mark and measure the character of his relations to his younger brethren. And I can imagine that this occasion would be to him of lessened significance, were an opportunity not given to that portion of the Bar, to express their remembrance of his unfailing kindness toward them—their sense of an enduring obligation to cherish his memory.

Your Honor will hardly realize how many members of the profession knew Mr. Abbott only in the performance of the duties of Clerk of the Courts, so swift is the flight of time, and so brief the span of the lawyer's usefulness. With those his reputation as a lawyer must rest largely upon tradition and inference.

But in the position in which he spent the last fourteen years of his life, we all knew him. His manner of administering the oath of our office developed and emphasized its full meaning and beauty, and he who entered into the office of an attorney and counsellor within the courts, under the sanction of the oath thus administered, could not fail to realize that he had begun the performance of grave duties, with high and weighty responsibilities.

Mr. Abbott loved the law in action. The cause was barren indeed which did not excite his interest, and the advocate ill equipped who could not secure his attention to its conduct. Frequently the Bar sought his advice and welcomed his criticism, and they were freely given, not through favor to the parties or their counsel, but impersonally, through love of good fighting, and a desire that all controversies should be fully and fairly tried, according to the law and evidence.

The sound advice, wholesome criticism, and measured praise when praise was due, of one so "skilful in precedents, wary in proceeding and understanding in the business of the Court," helpful to all, was of inestimable value to the young lawyer in the first years of his practice. It encouraged his efforts, yet tempered his zeal; it stimulated his confidence, and, in the same degree, increased his carefulness. Upon all questions of professional ethics, in those delicate situations where duty to the client seemed to make against courtesy to the Bar, or fidelity to the Court, Mr. Abbott has been for our inexperience the invariable arbiter, and his decision the final authority.

In view of what he has been to those upon whom in turn heavier burdens will fall, and who must soon serve as exemplars to the generation pressing upon us, may we not, your Honor, indulge in the hope that the influence of the life which has ended may in the future, as in the past, bear precious fruit to the community in which he was born, has lived, worked and died.

Mr. Henry Wardwell then spoke as follows:—

May it please your Honor:—How admirably and amply Mr. Abbott filled the important and honorable offices in the Courts, which he held so long, all know. In his case, clearly, the man dignified and magnified the office, not the office the man. To some of us, his career as District Attorney is not a matter of personal recollection. But he then became so widely known, and the impression that he made

on the people of this county was so deep and lasting, that the unvarying popular judgment in regard to it must be familiar to every one.

To all the duties of the office he brought excellent qualifications: learning, good sense, tact, industry and affability. But before the juries he was always a power. For an advocate he had admirable qualities, both of body and mind. He had a strong and pleasant voice, a dignified and always courteous manner, and a fine presence. He was clear and strong in statement, and clothed his thoughts in language at once beautiful and vigorous. He was shrewd and adroit. He was at home in dealing with all kinds of men, and knew how to approach them, what motives were likely to influence them, and how best to reach their minds and sympathies. He was noted for his politeness in the treatment of opposing witnesses, and for great fairness in the trial and argument of cases. As he came to the argument he had already, by the attractiveness of his voice and presence, and by his manner and bearing, won the good will and sympathy of the jury, and they were often more than ready to be influenced and convinced by his earnest and persuasive speech.

A brief period of very successful general practice at the Bar intervened, and he entered on the office of Clerk of Courts, attracted by the comparative quiet of the office and its freedom from the care and anxiety concerning his cases, from which he found it almost impossible, in practice, to relieve his mind. In what manner he filled this office is fresh in our minds. For all its duties he was more than abundantly capable and equipped. The Courts and the public were fortunate that he was content to serve them. By his well established reputation and character, his dignified and impressive manner, and his whole bearing and conduct in office, he added to the dignity of the Courts and increased the respect with which they are regarded.

In these offices, and the others to which he was chosen by the people of his town and county, so far from being the object of adverse criticism, he had the great good fortune to

have it continually thought and said that there was no office within the gift of the people that he could not worthily and honorably fill, or that he could not have, if he were willing to seek or accept it. In the field of national politics, if he had chosen to enter it, his knowledge of men, his sagacity and address in dealing with them, his fine personal presence, his learning, his literary taste and culture, and his eloquent and persuasive speech, would have assured him great success.

These things, as I have said, are known to all. There is another part of the life of Mr. Abbott not so widely known, but equally honorable. Born of excellent stock, in the town of Andover, he there passed his youth in a good home, whose influence powerfully affected his whole life. His religious belief and feelings always remained firm in the faith in which he was reared. Soon after coming of age he came to make his home in the old town of Danvers, the part in which he lived being afterwards South Danvers, and now Peabody. With the affairs of these towns he was closely and very prominently identified for about forty years. He took pride in the honorable history of the town, and in its growth and enterprise, and was deeply interested in whatever concerned its good name and welfare. Until his later years he was accustomed to take an active part in town meetings when matters of special importance came before them. Here, as before a jury, his presentation of a subject was clear and forcible, and always very attractive and interesting, his manner thoroughly earnest, but fair and conciliatory, his management skilful and effective. Whatever measure he gave his support to was almost certain to prevail. For some years, however, only matters that seemed to him of the greatest consequence had been able to draw him out to active participation in the affairs of the town, but always with his old time influence and success.

I recall one of these later occasions. It had been proposed to remove the old battle monument that stands on the spot where the minute men gathered on their way to Lexington.

The proposition roused his indignation. For days and nights, as he said, before the time when the subject was to come up in the town meeting, it hardly left his thoughts, and when the matter was brought forward it failed, with hardly an effort in its favor, though the project had been long talked of, and its presentation carefully prepared, chiefly, if not solely, because it became known that Mr. Abbott was determined to defeat it.

When distinguished strangers were to be entertained, of which there were several noteworthy occasions, he was the one looked to, by common consent, to represent the town; and he always performed this duty with admirable grace and good taste. His formal public addresses, among them in very recent years those on the death of Garfield, and at the dedication of the town hall in Peabody, and his memorial address here on Judge Lord and Mr. Ives, were models, in thought, language, and delivery.

His patriotism was deep and fervid. During the rebellion his habits of life hardly permitted an active participation in the war, but in his town and elsewhere he was always ready and earnest in every measure for the support of the government. Even the bonds of personal friendship could not restrain his quick resentment at any word of lukewarmness or disloyalty.

The Peabody Institute, in whose management he was prominent from the beginning, and at the head at the time of his death, was the object of his special care and pride. He labored earnestly to enlarge its usefulness, and zealously guarded its interests, and sought to make sure its future prosperity. No doubt to him the institution owes more than to any other person, except its illustrious founder.

To those near to him he was very tender and affectionate. His friendships were deep and warm. Whoever had him for a friend was sure that his attachment was true and strong, unselfish, active, and always to be depended on. He was kindly and generous. He was benevolent, but without ostentation. Few knew of his gifts, but the many objects of

his charity. He was pre-eminently a good citizen and neighbor. When it was known that he was dangerously sick, his townsmen anxiously watched the progress of the fatal disease, and when he died the regret and sorrow were universal. All said that a good man was gone, whose loss to the community could hardly be made good.

Mr. George B. Ives then said:—

May it please your Honor:—Even at the risk of wearying your Honor, and perhaps of merely repeating what has been much more eloquently said already, I cannot refrain from saying a few words to express how forcibly the death of Mr. Abbott comes home to us, the younger members of the Bar, and how very great is the feeling of a personal loss experienced by every one of us.

Of the natural and just pride which this Bar, and, indeed, the whole county of Essex, had in him as a private citizen, or as District Attorney, or as Clerk of Courts, other gentlemen, who have known and respected him in all those positions, have already spoken, and I, whose only knowledge of him has been since he has filled the office of Clerk, could not, if I would, add anything to what has been so fitly expressed in the memorial which has been presented.

But his never-failing courtesy and kindness in performing the duties of the office, and his promptness and readiness to render assistance and guidance in matters of pleading or practice, are facts which we have all experienced, and the regret which the whole community feels at the death of a faithful officer, is, in my case at least, overshadowed by the grief consequent upon the loss of a kind and indulgent friend.

Of Mr. Abbott's rare oratorical gifts, and of his moving eloquence, we younger men knew scarcely anything, except by tradition and report, until the last April term of the Supreme Court for this county, when he presented to the Court the memorials, which have been referred to today, of the two men who were, of all his professional brethren, perhaps the nearest to him during the later years of his life. Those of

his juniors who listened to him that afternoon, must have shared my keen regret that we had never enjoyed the privilege of hearing him at the Bar.

Of the eulogistic words he employed in one of those memorials it does not become me to speak, but the appreciation of, and love for one so closely connected with myself, which are so eloquently expressed therein, can, as may well be imagined, but augment my sorrow at the loss of so dear a friend.

JUDGE PITMAN then spoke as follows:—

BRETHREN OF THE ESSEX BAR:—I little thought when in midsummer, our departed brother at the close of the term took me by the hand in this place and with characteristic cordiality spoke of my return to hold this term, that I should come here not to meet him but to mourn him. And I am here today not merely to render a decorous accord to your request, but to express in inadequate but heartfelt words not only on my own behalf but on behalf of all my Associates, our deep sense of the great personal and public loss sustained in the removal of our long honored Clerk.

Others have spoken fitly of his skill as an advocate—of his integrity and ability as a prosecuting officer; and, with loving remembraace, have called to mind some of those traits which made him so fine an embodiment of the Christian gentleman. But it is natural that I should speak of him in the special capacity in which I have known him best; and where he has been to me a companion, a counsellor, and a friend.

Essex has been fortunate in her public officers, especially in those connected with her Courts, and in none more so than in her Clerks. It is not too much to say that Mr. Huntington, the immediate predecessor of Mr. Abbott, bringing to the position a force of character and a forensic eminence widely recognized beyond the county, and thereafter discharging its duties with conspicuous ability, had made the office illustrious. Of his successor your Memorial has truly said that "there was no place at the bar or on the bench to which he

could not have justly aspired." But it was our felicity that Mr. Abbott's ambition was not equal to his ability, and his love of home stronger than his love of place.

> "A soul whose master bias leaned
> To home-felt pleasures and to gentle scenes,
> Sweet images, which, wheresoe'er he was,
> Were at his heart."

Thus he served us with quietness of spirit for fourteen years, and earned the title you have given him of "the model Clerk." To the office he came with a very high sense of its duties. Of it he thus spoke in his impressive tribute to Mr. Huntington:—

> "There is no professional place more responsible than this; none the incumbent of which can do more for the convenience and comfort of his brethren, or for the orderly, reputable, and correct administration of justice. And, accordingly, the proper qualifications for it are exceptional and rare."

Those qualifications were Mr. Abbott's by nature, by general culture, and by special training. What he was thus enabled to do for "the convenience and comfort of his brethren," you best know and have justly recognized. What he did "for the orderly, reputable and correct administration of justice," is partly known to all men who ever entered within his time the Courts of Essex; but to which the Justices of the Superior Court would bear most emphatic testimony. From the numerous terms of Essex, held at places inconvenient to him at times, he was never absent except in cases of necessity. He sent no assistant to attend to the more disagreeable work of the criminal sessions. On the contrary, there, as he said to me, he felt to be his special duty. And there his experience, his skill and aptness, his soundness of judgment, his exactitude of method, and his singular dignity of manner, found most ample scope. I do not believe that the criminal law, so far at least as depends on its machinery, was ever more impressively administered anywhere than in this county during Mr. Abbott's clerkship.

How solemnly, and yet with a certain grave tenderness were the sentences of the Court announced. How memorable

the very tones of his voice upon such occasions—clear and firm, but with a certain sorrowful considerateness. Nor was the merest routine of duty ever slighted or performed in a perfunctory spirit. Who can forget his impanelling of a jury in a criminal case, even though repeated so often during a day's trial of petty misdemeanors. Nothing to him was small or trivial that involved a duty. He reverenced every ceremony and every ritual which pertained to the temple of justice. He served as a priest at her altars, and touched all things with the dignity of his presence. How thoughtless an act is often the administration of an oath. To Mr. Abbott it was always a solemn act, and performed as such, not with affected seriousness, but with a sincere and simple piety.

Let us not dwell longer upon details, for the man was greater than anything he did. In the last analysis it is character that impresses us; and it is in the totality of his character that the true secret of his power lay, and that will best ensure his perpetual remembrance by all who knew him. That character had fully ripened. No frosts of winter had touched his powers. Body and mind were in autumnal beauty. Time had not touched him but to mellow. For us we could have desired a still longer service. But in the Master's eye it was a finished life. He has passed from our sight in the fulness of his strength. We shall associate no thought of feebleness or decay with his memory. From life to life, for "death is another life." He fell almost at the post of duty; "and then," to use his own words in a late tribute to a lamented brother, "soothed by the kind ministrations of domestic love, and as we may well hope with an unfaltering trust in the Divine love, in which he had always humbly believed, he went to his eternal rest."

No record is needed to perpetuate the memory of such a man; but there is a sad satisfaction in doing for him what he has so often and well done for others; and so let this fraternal tribute of the bar, with a minute of these proceedings, be entered upon the records of this Court.

NATHAN W. HAZEN.

At the Superior Court held at Salem on Tuesday, December 6, 1887, JUSTICE THOMPSON presiding, MR. WILLIAM D. NORTHEND, President of the Essex Bar Association and member of the Committee, presented to the court the following

MEMORIAL.

MAY IT PLEASE YOUR HONOR:—On the thirteenth day of March last, MR. NATHAN WOOD HAZEN, a member of the Essex Bar, departed this life. At a meeting of the Essex Bar Association held at Salem on the fifteenth day of June last a committee was appointed to prepare a tribute to the memory of the deceased, to present to this Court with the request it be entered upon its records; and in accordance therewith the Committee appointed respectfully present the following Memorial.

Mr. Hazen was born in Bridgton, Maine, July 9th, 1800. He was a lineal descendant from Edward Hazen, one of the early settlers of Rowley in this County. His father, Jacob Hazen, was a prominent citizen of Bridgton, and served his country as a soldier in the Revolutionary war. His mother, Hannah (Wood) Hazen, was born, and until her marriage, lived in Boxford in this County. At the time of her marriage Bridgton was a frontier town with a sparse population. Mr. Hazen often referred to the fact that when he was three months old his mother carried him on horseback the entire distance from Bridgton to Boxford to visit her parents. She was a woman of superior character, and he to the last cherished the warmest affection and reverence for her memory.

He was educated at the common schools and at Bridgton Academy. He was very studious, and at school laid the foundation for the scholarly habits which characterized his after life. He came to Salem when about sixteen years of

age where he remained several years, when he removed to Beaufort, South Carolina, where he taught school. Afterwards he returned to Salem and read law in the office of Mr. Leverett Saltonstall and was admitted to the Bar of this County in 1829, and immediately commenced the practice of his profession in Andover where he resided to the time of his death. He had for many years a considerable business in the courts, and was distinguished for great carefulness in the preparation, and confidence and courage in the trials of his cases. He made no pretensions at rhetorical display, but discussed questions of law with great clearness and ability. He was always ready at repartee. An anecdote is related of him that soon after his admission to the Bar, he was engaged in the trial of a cause in which the counsel opposed to him was a very large man physically. Mr. Hazen was a very small man in stature. In the course of the trial his opponent in reply to a statement of Mr. Hazen exclaimed: "My little fellow, I could catch you up and stow you away in my coat pocket." Mr. Hazen immediately arose and replied: "May it please your Honor, if my brother should put me in his coat pocket, he would have more law in his pocket than he ever had in his head."

Mr. Hazen was a member of the Massachusetts Senate in 1856, and was for many years President of the Merrimack Mutual Fire Insurance Company. Although he was always deeply interested in the political questions of the day, he had but little ambition or desire for public life. He was a man of generous culture. His greatest enjoyment was in his well filled library, and his reading was extensive and thorough upon a large variety of subjects. He wrote many able articles for magazines and reviews. His letter to the Essex Bar Association upon the death of Mr. Nathaniel J. Lord, which is printed in his memorial volume, for literary excellence, careful and just analysis of character, and chaste and loving eulogy, has attracted the attention of every reader of the volume. His more recent memorial of Caleb Cushing, presented to the Supreme Judicial Court in behalf of the Essex Bar Associa-

tion, was a very able and eloquent tribute to the memory of that distinguished jurist and statesman. In private and social life Mr. Hazen was an exemplary man. He was a loving and devoted husband, and a kind and sympathizing neighbor. With a mind well stored with information, his conversation in the company of friends, was always listened to with pleasure and instruction. His friendships were very strong and enduring. In his last years he delighted in frequent visits to his friends, especially of the Bar, in different parts of the county, and he was always welcomed. His old age was

"As a lusty winter
Frosty, but kindly."

May it please your Honor, at the request of the Essex Bar Association I ask that this brief memorial may be placed upon the records of the Court.

Remarks of Mr. DANIEL SAUNDERS:—

MAY IT PLEASE YOUR HONOR:—In rising to second the motion that the memorial just read be placed upon the files and made a part of the records of this Court, I do so not to add anything to that which has been so well said in this just tribute to the memory of one of our oldest and most respected members of the Bar, but simply to say that my long and intimate acquaintance with Mr. Hazen enables me to assert with confidence and authority that the memorial does no more than justice to the character, ability, and virtues of the man. To a large number of our Bar Mr. Hazen was not known personally as he had retired from active practice before they came upon the stage of professional duties. He was a cotemporary with Saltonstall, Merrill, King, Choate, and the Lord Brothers—men who have made the Essex Bar the foremost in the state. These men were his friends and intimate acquaintances, beloved by them for his kind, genial, and social qualities, and respected by them for his sterling worth, learning, and ability.

Mr. Hazen was a man well trained by thorough study in his profession, and he brought his cases before the courts with

careful preparation and presented them with a logical clearness that enabled the court and jury to understand at once the law and facts in issue. While most of the members of this Bar have never had an opportunity to witness this display of his talents, if they will look through our law reports they will find that he has presented to the bench some of the closest questions in law that the courts have been called upon to decide—and a careful reading of these cases will show that Mr. Hazen had not only a clearer appreciation of the great principles which are the foundation of law, but that he had also a keen insight in those fine shades of distinction which separate analogous cases. He was a true and faithful friend, and a kind neighbor, a just and upright citizen. A man well worthy to be remembered among his great cotemporaries, and his example to be followed by those who come after him.

JUSTICE THOMPSON said:—

BRETHREN OF THE BAR:—When I came to this Bar, thirty years ago, Mr. Hazen was acknowledged by the Courts, the Bar, and the public, to be a wise and learned counsellor, an upright man possessed of marked ability and true dignity of character, and he was so regarded by all who knew him to the hour of his death. He entertained a high regard for his brethren of the Bar and always gave them a hearty greeting. He took a lively interest in everything relating to the profession.

Although for several years before his death he was not actively engaged in the practice of the law, and consequently the younger members of the law have not had the opportunity to witness his efforts or to judge from personal observation of his ability as a lawyer, but they have learned from those who were his contemporaries that he was well grounded in the elementary principles of the law, a diligent student, accurate in his learning, skilful in pleading when the principles of pleading were much more complicated than now, when success depended largely upon one's ability to correctly present the issue to be determined.

He had a clear appreciation of the questions of law involved in a case, and was able to discuss them with great clearness and learning, and was a formidable opponent in a trial where important legal questions were involved.

When he used his pen to discuss public questions he always made a valuable contribution to the subject and proved himself to be a writer of rare merit. He was eminently a conservative. He looked with apprehension upon any radical change in law, government, or society, and held in veneration the institutions and laws established by the fathers. He realized the fulfilment of the promise of length of days for the righteous, and having faithfully performed the duties of this life he fell asleep to awake to the realities of another and higher life, leaving an honored name, and none but pleasant memories.

Judge Thompson then ordered that the Memorial be placed upon the records of the Court, and that the Court be adjourned.

GEORGE F. CHOATE.

At a meeting of the Essex Bar Association held September 4, 1888, Messrs. William D. Northend, Thomas B. Newhall, Elbridge T. Burley, Eben F. Stone, and Jeremiah T. Mahoney were appointed a committee to prepare a memorial of Honorable GEORGE F. CHOATE, to be presented to the Supreme Judicial Court.

MEMORIAL.

In the Supreme Judicial Court held at Salem, December 6, 1888, MR. JUSTICE FIELD presiding, MR. WILLIAM D. NORTHEND for the Essex Bar Association presented the following memorial:—

MAY IT PLEASE YOUR HONOR:—It has been for many years a custom with the Essex bar, when a member who has achieved distinction by his conspicuous ability and learning dies, to request the courts to place upon their records, not simply resolutions embodying the sense of the bar upon their bereavement, but a more full and extended tribute to show the estimation in which he was held by his contemporaries at the bar, and to do honor to his memory. In accordance with this custom, a committee has been appointed by the Essex Bar Association to prepare a memorial of the late Hon. GEORGE FRANCIS CHOATE, judge of probate and insolvency for this county, who died at Sharon Springs, in New York, on the eleventh day of July last, to be presented to this court. The committee have performed this duty, and respectfully present the following memorial;

Judge Choate was born in Essex, in this county, February 9, 1822. He was descended from one of the oldest and most respected families in this county. His father, William Choate, was a brother of Francis Choate and Dr. George Choate, who resided in Salem. Rufus Choate was their cousin. Dr. George Choate was father of the Hon. Joseph

H. Choate, LL.D., and the Hon. William G. Choate of New York city, and Dr. George S. C. Choate, formerly superintendent of the hospital for the insane at Taunton, and Charles F. Choate, Esq., president of the Old Colony Railroad Company. William Choate purchased from his brothers their interest in the paternal acres at Essex and followed the occupation of farming. He died in Essex in 1829, leaving as his only child the subject of this memorial, then seven years of age. The year after his father's death he was placed under the care of Mr. Francis Vose, master of Topsfield Academy, where he remained about one year, when he returned to Essex, where he lived under the care of his mother until he was twelve years of age. His health during most of this period was very poor, yet he was able to attend school a portion of the time under the instruction of the Hon. David Choate, brother of Rufus, who was for many years a successful teacher in the town.

In 1834 he entered Dummer Academy, where he continued his studies under Master Nehemiah Cleaveland, LL. D., until 1838, when he was placed under the instruction of the Rev. Sidney Eaton at Andover, where he finished his preparation for college. In 1839 he entered Bowdoin College and was graduated from that institution in 1843. After finishing his college course he taught school in his native town two years, when he entered the office of the Hon. Jonathan C. Perkins, LL.D., and was admitted to the bar in this county in 1847.

Immediately upon his admission to the bar, he entered into a law partnership with your memorialist under the firm name of Northend and Choate, which was continued until his appointment of judge of probate and insolvency for the county of Essex, in 1858. He continued in this office until the time of his death.

No words of mine are necessary to inform the court, the bar, or the people of the county, of the manner in which he performed the various and oftentimes perplexing duties of his office during this long period. This court having appellate jurisdiction from the probate court has been made familiar

with the ability, wisdom and prudenee with which he discharged his official duties, and has often shown its appreciation of these qualities in selecting him as master to aid the court by preliminary hearing and report in important causes. The bar of the county have not only been made familiar with his conduct on the bench in their frequent and varied practice in his court, and learned to appreciate his great abilities and judgment in the discharge of the duties of the office, but have been accorded, without stint, the benefit of his extensive and accurate learning, in intricate cases of their own, in every branch of jurisprudence. The bar, in his death, have lost a wise counsellor and friend. It is to each member a personal loss and bereavement. The people of the county, and there are but few families which have not been represented before him, learned to confide implicitly in his wisdom and integrity, and to appreciate the patience and kindness which he invariably exhibited, and the assistance he, without ostentation, rendered them in their business before his court with which many were unfamiliar. The people of the county lament and mourn his loss.

Judge Choate was deficient in qualities indispensable for a successful advocate. His intellect was so constituted that it was difficult for him to consider one side of a case without equal regard to the merits of the other. There could be, in his nature, no enthusiasm in searching out the strong points of a case for the purpose of asserting those on the one side and denouncing those on the other. He could not make the worse appear the better reason; he could never be a partisan. But he possessed in an eminent degree the qualities of mind and the temperament essential in the performance of judicial duties. Always dispassionate and self-possessed, he tried causes with great patience and impartiality. In the decisions he arrived at in the large number of cases he tried, however much disappoinment the losing party might feel, no one ever, for the moment even, accused him of unfairness or partiality. It has been often said of a class of judges that their decisions might be respected if they did not attempt to

give their reasons for them, but it was the custom with Judge Choate in cases submitted to him as referee or auditor, to give fully in his findings the grounds and reasons for his decision, and the clearness and consistency of his statement with his decision were always appreciated by both parties, and often reconciled the losing party to the result. He was a careful and industrious student. He was well grounded in the principles of the common law, and to the last, read and was familiar with the decisions of the Court in all branches of law and equity.

He annotated an edition of Angell on highways and of Perry on trusts, and for a time intended to write a book on probate law. His portrait by Vinton, painted at the request of the bar, has been placed in the law library.

Judge Choate was modest and unassuming in his manners. Although he took much interest in public affairs and held decided opinions upon the political questions of the day, he never sought public office. He held in utter contempt the arts of the politician and would never take an active part in political organizations. His ambition was satisfied with the careful and conscientious performance of the responsible duties which his office and his appointments by the court and bar called for. He took a deep interest in the cause of education and served on the school committee of Salem for fourteen years, and he was for many years, to the time of his death, a trustee of Dummer Academy, in which institution he took a great interest.

I can hardly trust myself to speak of Judge Choate in private life. My schoolmate, classmate in college, and partner for eleven years, intimate and confidential always, to the last, no words of mine can adequately portray that character which is hid from the public eye. Those who knew him only in the performance of his professional and official duties can have but little idea of the beauty and simplicity of his character in private life. True and unswerving in his friendships, interesting and instructive in conversation, generous and confiding, abounding in that charity that "thinketh

no evil," he was beloved by all who were admitted to his friendship. He was "to those men that sought him sweet as summer."

In behalf of the Essex Bar Association, I ask that this memorial and a minute of these proceedings be entered upon the records of this court.

Upon the reading of the memorial, Mr. Thomas B. Newhall said:—

I desire, may it please your Honor, to express my entire concurrence in the portraiture of the character of the late Judge Choate, as drawn in the paper just read by our brother Northend. I was called to the bar at an earlier date than Judge Choate, and have known him through the whole of his professional and judicial life, casually in its earlier years, but, after he was appointed judge, more thoroughly from the acquaintance which I made with him in his court. From his reputation at the bar I had begun to respect him as a practitioner, and from full knowledge of his traits I formed the highest respect and some larger measure of admiration for him. He was conceded to be an able and learned judge, but I think that the most striking and admirable trait of his character was his moral and mental conscientiousness. Suitors are often disappointed, and judges sometimes err, but I think no one left his court, whatever may have been the results in his cause, whether favorable or otherwise, who did not feel that he had a judgment untainted by passion, prejudice or any wrong influence. Judge Choate's mind was discriminating, free from all influences which imperceptibly may disturb the judgment of the most conscientious magistrate. He was apparently wholly free from any bias of friendship or prejudice. He carefully and thoroughly studied and considered the questions upon which he had to pass, and the judgment when arrived at received weight and confidence from his high personal character. He was retiring and undemonstrative, but cordial and genial in his intercourse, attracting and making friends, not by any grace of manner

or personal accomplishments, but by the grace which a kind and benevolent heart, and a cultured and well improved mind, and a warmth and sincerity of affection, so conspicuous in him, imparted.

He was patient, impartial and firm, but ever ready to receive any information or light which suitors were able to give him. He was pure in mind, of great integrity and candor, of firm religious faith, of generous and genial impulses with his friends and acquaintances, and a most delightful and instructive companion. I respectfully second the motion made by Mr. Northend that the memorial and a minute of these proceedings be entered upon the records of the court.

Mr. Daniel Saunders then said:—

May it please your Honor:—In speaking of Judge Choate and expressing my idea of his character I can and do most heartily indorse all that has been said of him in the memorial just read and in the remarks of Judge Newhall in seconding the request that the memorial be made a matter of record in this court. The memorial written by a loving and life-long friend expresses in fitting words an eloquent, but only a just and well deserved tribute to the memory of our departed brother.

Mr. Choate's character has been appreciated long before it was developed in judicial decisions. His legal attainments had attracted the attention of the courts, and his honesty and integrity had won the confidence and respect at the bar, so that long before his appointment as judge of probate he had been selected by the bar and bench to act as referee, auditor or master in chancery in many important cases. The legal acumen which he displayed, and the careful consideration which he gave to all matters submitted to him, together with the fairness and impartiality of his decisions, pointed him out as preeminently a fit person to administer the delicate and important duties of a probate judge. During the long term he held this office no one questioned his fidelity to duty, and this court had but few occasions to overrule his decisions.

However eminent or successful may have been his predecessors, or however worthy may be his successors, in the office which he filled so acceptably, no one has left, and no one will leave it, with a higher regard of the bar, or with the more profound respect and veneration of the people.

Fleeting as is the reputation of the most eminent lawyers, yet will the memory of Judge Choate be held in high esteem so long as any of his contemporaries survive him, and the record of his judgments in official life will be an enduring monument to his ability and integrity.

Mr. William H. Niles said:—

May it please the Court:—I deem it a privilege to endorse as far as I am able all that has been said. My acquaintance with Judge Choate did not extend as far back as did the acquaintance of the brethren who have preceded me, but I did know him for nearly twenty years, and for ten years or more I knew him well.

It has been truly said that he was a remarkable man. Everyone who had business in his court or with him anywhere became sensible of his superiority. Such learning and such dignity are rarely seen in any man, and yet he was so mild in his manners, so patient and so modest everywhere and at all times, that there was peculiar pleasure as well as security in dealing with him.

Of all that distinguished him in his court, and there was much, there was nothing greater than his intense and conscientious desire to penetrate and understand thoroughly every matter brought before him. Young men and those not much versed in law, or much used to practice in court, felt before him a degree of safety not generally experienced, even before our best judges, and out of court as well as in court, he was always ready to assist and give advice from his learning and experience which seemed inexhaustible.

He thoroughly disliked fraud, deceit or any indirection, and if anything of the kind appeared he did not let it pass until he had deeply probed it, so that the person accused

might be vindicated if it were unfounded or exposed if it were true. His honesty and conscientiousness, as well as his learning and patience, justified the confidence which we all felt in going before him.

But it is needless for me to say more, and I cannot do better than to close as I began, by expressing my earnest and heartfelt endorsement of all that has been said.

Mr. Solomon Lincoln then said:—

May it please your Honor:—I was unaware when I came into the court room a few moments ago that this afternoon had been selected to pay our respectful tribute to the memory of Judge Choate, and I could have wished that such a part as I might take in it could have had the benefit of more preparation. Such was my respect and regard for him that I feel that such a duty requires careful thought; but though what I say is unpremeditated it is none the less sincere.

It was my good fortune to know Judge Choate in various relations: as a neighbor and friend, as a citizen of this municipality, as a lawyer, practising to some extent at the Bar, and, as all knew him best, the judge of the probate court of this county. When I recall these various relations I might perhaps touch upon qualities which were conspicuous in each; nevertheless, such a discrimination is not especially valuable, because the same traits of his strong personality were exhibited in all his relations to all of us.

Recalling him as a neighbor and a friend, his memory comes to all of us who had the privilege to know him thus with feelings of deep affection. As a citizen of this community none was wiser or more public spirited; and there was none whose services it might have employed with greater advantage. As a lawyer he was a most sagacious counsellor; and although in these courts his appearance was too infrequent, and his too great modesty always restrained him, yet he rendered most valuable assistance to the bench and to all who sought his aid.

In reference to his qualities as a magistrate in which func-

tion his most conspicuous services were rendered, I could not hope to add anything to the very complete, discriminating, and affectionate tribute which our brother Northend and those who have followed him have paid. Nevertheless, it is a pleasure to call to mind the associations of his court. I may say for all whose practice brought us there, that not merely were we impressed with the conviction that an honest judge was endeavoring to render justice—this we can proudly say of all our courts—but before him we experienced a sensation of pleasure, of intellectual pleasure, in practising before a magistrate whose abilities commanded extreme respect and by whom we knew that every position well taken would be understood and supported. We felt not merely that he was a judge anxious to render justice if he could see the way; we knew that he saw the way, that his court was not a place for shallow claims. So well was this understood that in this county he was judge not merely by authority of the executive commission, but by a voluntary selection, well nigh universal, on the part of litigants who preferred his private arbitration to the scarcely more unerring justice of the courts.

It is, however, as I said, hardly profitable to attempt to discriminate between the qualities which he displayed in various walks. Over them all his modesty threw a partial veil,—a modesty which, if I may so say, was almost a fault. At least, the community suffered in the loss of services which he was so well qualified to render, but which this modesty forbade him to render unasked.

I prefer to give my last word to those feelings of regard and affection which all entertain who enjoyed the privilege of his delightful acquaintance. He had the experience and shrewdness of the man of affairs, with a keen eye to discover whatever was unsound and false: to this he added the culture and wit of the scholar. Beneath all lay a kind and generous nature. These qualities lent a genial charm to our intercourse with him and keep his memory green.

Mr. Thomas M. Stimpson then said:—

I well remember the occasion of my first meeting with

Judge Choate. He was then in practice at the Bar as a member of the legal firm of Northend and Choate. I had just finished my college course and was about to take the first steps to enter upon the study of the law. The reputation of the firm drew me thither for advice as to my course. The kindness of Mr. Choate won my regard at once, and his general bearing made an impression upon me that will never be effaced.

As time went on, and opportunities for judgment multiplied, I and my contemporaries at the Essex Bar came to entertain for Mr. Choate's legal attainments a very high opinion. In due time an opportunity came to give expression to that opinion.

A vacancy had occurred in the office of judge of the court of probate and insolvency for this county. Many of us, his legal brethren, thought him the fittest man for the place, and urged his appointment with success. At a period in life when he had a long career of usefulness before him he entered upon the duties of that judicial post.

With what fidelity those duties were performed is known to all here present, and no greater tribute, than to acknowledge that fidelity, can be paid by us to our departed friend. But beyond this, we take pride in the ability displayed by Judge Choate in his many and varied duties, calling out to the full his eminent legal attainments in the way most congenial to him. His stores of legal knowledge were equal to any emergency, and he was unsparing in the patience and good nature with which he brought them to bear, on all proper occasions, to smooth the path of those who met with difficulties while practising before him.

Judge Choate, in his judicial, and to some extent in his social intercourse with others, has been called rather taciturn. To some extent this was true, but it was so because the frivolous and inconsequential were foreign to his very nature, which had as little sympathy with mental weakness as with moral turpitude. We have all seen occasions when he was even eloquent in vindication of the right and in exposure of

what was wrong. Rarely, except at such times, did he display that warmth of nature, which gained for him so high a place in the regard of those who enjoyed his friendship and confidence.

Mr. George Wheatland then said:—

Judge Choate was modest, retiring, unassuming, in all his ways. He little appreciated his own legal talent and acquirements; he was one of the best lawyers it was ever my lot to meet. When he was appointed judge of probate he entered upon the duties of the office with a full sense of what lay before him, and he performed the duties of the office for twenty-nine years to the entire satisfaction of the Bar and the public.

Mr. Justice Field responded as follows:—

Brethren of the Bar:—Although my acquaintance with Judge Choate was slight, I have long known what the bar and the people of this county thought of him. You can speak of him with an intimate knowledge, for his whole professional life was spent here. He held the office of judge of probate for almost a generation, and the titles to a large part of the property in the county must have passed through the court while he was judge. The jurisdiction of a judge of probate under our statutes is so extensive and varied that he can exhibit and use in his office many accomplishments and many kinds of ability, if he have them. His duties are in a sense administrative as well as judicial: he sits like a judge of old time, accessible to all suitors, to give direction and advice as well as to decide controversies. Many questions come before him in which he has not the aid of the bar, and often good judgment and a knowledge of men and of affairs are as necessary as professional learning. The careful and intelligent manner in which Judge Choate performed all his duties is well known to this court, before which many of his decrees and reports as master or auditor have come for examination. The judgment of the bar and of the public upon his ability, character and conduct you have expressed in your memorial.

I have noticed that Judge Choate was uniformly spoken of with a degree of affection not always felt for every good lawyer or good judge. He seemed to have acquired none of the irritating intellectual habits which have sometimes been attributed to lawyers. Perhaps as your memorial suggests, his inability to exaggerate trifles or to look only at one side of a question and a certain lack of smartness and self-assertion, account for this. He was never arrogant or disputatious. He appeared like a scholarly, conscientious and well-bred gentleman, who felt that the administration of justice to which he was devoted was but one of many ways in which the existing civilization is maintained and the common welfare is promoted. It is becoming that such permanency as a record affords should be given to the reputation which he acquired among his contemporaries. It is therefore ordered that the memorial, with a memorandum of these proceedings, be entered upon the records of this court.

CHARLES P. THOMPSON.

At a meeting of the Essex Bar Association held in the Court House in Salem, January 22, 1894, the President and Messrs. Northend, Moody, Moulton, Herrick, Niles and Saunders were appointed a committee to prepare and present to the Superior Court a suitable memorial of CHARLES P. THOMPSON.

At a session of the Superior Court in Salem, June 29, 1894, there being present JUSTICES SHERMAN, LILLEY and SHELDON, MR. WILLIAM D. NORTHEND for the committee, appointed by the Essex Bar Association, presented the following

MEMORIAL.

MAY IT PLEASE YOUR HONORS:—The Essex Bar Association, in accordance with a revered custom, appointed a committee to prepare a Memorial of the late Honorable CHARLES PERKINS THOMPSON, a member of this Bar, and a Justice of the Superior Court of this Commonwealth, who died at Gloucester, in this County, on the nineteenth day of January last, to be presented to this Court, and the committee respectfully report:

Judge Thompson was born in Braintree, July 30th, 1827. His parents were Frederick M., and Susanna (Cheesman) Thompson. He attended the public schools of the town until he was nineteen years of age, when he entered the Hollis Institute in South Braintree, where he remained two years. After this he commenced the study of law, and in 1852 entered the law office of Messrs. Hallett and Thomas in Boston, and was admitted to the Bar in Suffolk County, October 16th, 1854.

Mr. Isaac C. Wyman, who was a student with him in Hallett and Thomas' office writes, "It was in the fifties, some forty years ago, that the late Judge Charles P. Thompson

became a student in the office of Hallett and Thomas at the corner of Court Street and Court Square in Boston, where Young's Hotel now stands. They had four rooms in the third story of the rough hewn granite structure, called Tudor's Building. The architecture was ponderous, with great beetling hoods of projecting stone over the low, broad and deep windows, doors and eaves. The original dark color of the granite, which age had stained with moss and smoke, gave uniformity to its somewhat gloomy appearance. It impressed one as picturesque, but repulsive. The antiquated building had witnessed many changes in its neighborhood, but there had been no changes in its own perpetual frown.

Three of the rooms of the office suite opened into a fourth one on three of its sides. The occupant firm were gentlemen and lawyers of the old school, devoted to their profession, punctilious in the observance of professional courtesy, and exact in the knowledge and administration of the common and statute law. In their eyes a breach of the laws of courtesy was no less culpable than a breach of the criminal law. Their bearing towards students was affable, without familiarity.

The first room was used for the reception of clients and was in charge of a student. On the left was the room of Mr. Hallett and his son. In front was the room of Mr. Thomas and another student, and the room on the right was for students. Judge Thompson was the student in charge of the reception room, and he held the position for a long time. His native courtesy and magnetic amiability adapted him to the duties of receiving clients and gathering the facts of their cases. He naturally became the favorite with both clients and witnesses. The business was transacted with uniformity. Students were required to make the briefs with case authorities in support of each point, and to give the names of the witnesses and state briefly their testimony to the respective parts of the suit.

While Judge Thompson was clever at all parts of the work, he excelled in adjusting and applying the principles of law to the testimony, avoiding unnecessary details of irrel-

evant matters. For most of the cases, the brief, with a student in attendance, was the guide in the conduct of the trial. In that way a very large law business was accomplished with the least amount of labor possible.

For the noon hour the office business was suspended; the strictness of office rule was relaxed and the students' room was given up to mirth and recreation. At such times it was Thompson's wit that outshone all others. But it is unnecessary to say this to those who ever knew him. Yet even in its wildest moments his merriment was always of a kindly nature, and was never meant to wound or offend an antagonist.

After admission to the Bar he remained awhile with Mr. Hallett in discharge of the duties of Assistant District Attorney, conducting preliminary hearings before the United States Commissioners and the Grand Jury while Mr. Hallett held office. In that practice Judge Thompson became proficient in shipping and in Admiralty jurisprudence, and acquired his taste for that branch of the law. It was that which probably led him to remove to the seaport of Gloucester, when he began his successful practice there.

But it seems he never wholly forgot the happy student days, and when the grave mantle of the Judge rested its weight of dignity upon his shoulders, even in the midst of the long drawn tediousness and responsibitity of important trials, he would often spend his noon recess in humorous sallies with some old friend of student days, and at 'time up,' put on the court harness with appearance of renewed strength for the work.

You ask for some anecdotes remembered. The business became, as you will have perceived, hard work of the routine class; and odd things happened every hour and strange events so common that no one stood out in memory as more prominent than others. As to witticisms, his whole career sparkles with his vivid fancies; and generations of Essex lawyers will pass away before the relations of his bright sayings will cease to be heard in the solicitors' room of the Court House."

Mr. Thompson came to Gloucester in May, 1857, and it was his home from that time until his death.

It is the custom for the lawyers in the towns and small cities of the Commonwealth to engage in a general practice of the profession ; to do all kinds of office work and try cases in the Police Courts, before Trial Justices, and in the Superior and Supreme Judicial Courts. Gloucester being at a distance from a shire town, Mr. Thompson's court business for the first few years was confined to the local Court of Gloucester, and to the Justice Courts in neighboring towns.

He took a great delight in trying cases in the country villages, and many anecdotes are related of amusing incidents in these trials.

In a short time he commenced the trial of cases before the higher tribunals, and for many years before his appointment to the Bench, he had a large practice in all the courts. He was a successful advocate, and a leading lawyer in the county. From the interesting account by Mr. Wyman of his student days, it is evident he was busy in his studies and obtained practical knowledge which was very serviceable to him in his life work. He was well grounded in the common law which is the great foundation for success at the Bar. Indeed, without a thorough education in the great principles of jurisprudence, no one can hope for eminence in the profession. A lawyer with a sound and even balanced mind, and an accurate knowledge of these principles, is well equipped for his work. The importance of a good education in the principles of the law, which should be acquired in student days, can hardly be overestimated. When engaged in the general practice of the law, but little opportunity is afforded for regular study. However proficient a man may become in the knowledge of decided cases, he will be often compelled, especially in the more important causes, to fall back upon his knowledge of principles.

Mr. Thompson's success was largely due to his even and well balanced mind, and his knowledge of the principles of the common law. There are but few cases of extraordinary

interest in a practice like that of Mr. Thompson, yet many involving the niceties of the law, and requiring great ability and skill in their presentation. Mr. Thompson was engaged in many of the most important trials of his time, and by his learning, skill, courage, and manners, earned the distinction of being a successful lawyer.

The duties and efforts of the profession are not fully understood by the community at large. There exists a somewhat popular impression, that a contest in the courts consists of a struggle between opposing counsel for personal supremacy by use of any means they can employ to that end; and that verdicts are too often rendered on the side of the stronger and more unscrupulous attorney. This is untrue, and tends to the prejudice of the profession. It should be remembered, that most every contested case has two honest sides to it; each side has its law and facts, and the case must be decided, under the law, by a preponderance of evidence, to be determined by an impartial court. In the barbarous ages, when there were no tribunals for the trial of disputed cases, each party in a dispute asserted his claim by force; and the early dawn of civilization is characterized by the establishment, by law, of tribunals to settle peaceably, all controversies between parties. They were at first rude and governed by no fixed rules, but with the advance of society, courts were constituted with rules, over which men of superior knowledge and character were called upon to preside, who would command the respect of litigants; to which courts contesting parties were required to present their claims and grievances for adjudication. But the trouble and disorders on the trials, occasioned by the presentation of their claims by the parties themselves, inflamed by partisan passion, and with but little regard for their opponents or the court, led to the employment of men instructed in the law to present for the parties their respective claims. This was a most important step in the cause of justice. Any one who has had experience with a jury can well conceive of the difficulties on a trial, if the parties, many of them ignorant in the law, should try their own cases.

It is of benefit to parties and to society, that men learned in the law should manage the causes in the courts. It is the duty of a lawyer, and it is a responsible one, to present upon a trial in a clear and intelligent manner the facts upon his side of the case, to detect and expose any fallacies, and winnow any facts presented upon the other side, and to enforce by argument the weight of the facts proved. It may be said that if this is so, yet that the decision of a case may be influenced by the superior ability of the counsel on one side. This is true, but does not the strong man have the advantage in all the affairs of life. But it may also be said that all lawyers do not perform their duty as has been stated, and that some attempt, by artful perversions of the facts and by digging pitfalls for the unwary, to obtain verdicts. This is true, but such attempts are sure to fail before the keen discernment of the opposing counsel and the wisdom of the court. I can say with truth, that in a somewhat long experience and observation in the courts, the most successful, as they have been the most respected, members of the Bar, have been those distinguished for their fairness and manliness in the trials of causes. One who attempts to practice by arts and chicanery, not only finds his level with the Bar, but with the juries and judges, and is consigned to the disreputable class known as "pettifoggers."

No one was more just and honorable in his practice than Mr. Thompson. He prepared his cases with great care, and was prudent in the examination of witnesses. His addresses to the jury were very effective. He relieved the tediousness of an argument upon the evidence by frequent sallies of wit and humor. He was always respectful to the Court and rarely, in the most exciting trials, uttered a word which could wound the feelings of the opposing counsel. His imperturbable good nature was always in the ascendant.

In 1871 and 1872 Mr. Thompson was elected by his fellow citizens of Gloucester, to the House of Representatives of the General Court. He was appointed on important committees, and took an active and influential part in the proceedings of

that body. He was very popular with his associates, and his occasional speeches were listened to with attention. At one session a petition was presented for leave to sell the old South Church property on the corner of Washington and Milk streets in Boston. It was thoroughly discussed. The property had become very valuable for business purposes. The great value of it in the market was strongly urged by the petitioners. The opposition regarded it almost a sacrilege to tear down the old South Church, with its intensely interesting history antedating the Revolution. Mr. Thompson was strongly opposed to the granting of the petition. He denounced the scheme of the petitioners in an earnest and eloquent speech in which he said, referring to the money value of the property, "Mr. Speaker, I did not know before that land had got to be so high in Boston that the Lord cannot afford to own a corner lot." The effect of this can be well imagined.

In 1874, after a severe contest, Mr. Thompson was elected to the House of Representatives of the United States Congress. He earned an excellent reputation in that body, in which were many of the ablest men of the country. He was appointed chairman of a committee to go to Florida and make investigations on the spot, regarding the vote of that State in the Presidential election. It was a most important mission. He performed this duty with ability and impartiality. He was also an influential member of a committee appointed to investigate and report the facts in certain disputed elections to the House. He performed these duties in such a manner as commanded the respect of his political opponents.

At the close of the term for which he had been elected, he resumed the practice of law, which he continued until his appointment to the Bench of the Superior Court in 1885. From that time until his death, he was engaged in the performance of the duties of that office. The manner in which he performed these duties cannot be better expressed than in the language of an Associate upon the Bench to the Bar of Boston on the death of Mr. Thompson. He said, "As a

judge, his conduct for impartiality, independence and integrity was above all praise. The high and the low, the rich and the poor, the humblest and the proudest, stood upon the same level before him: and to all alike, so far as he could control the final decisions of the court, even-handed justice was meted out."

Mr. Thompson was always interested in the political questions of the day, and although he held decided opinions, yet he was very tolerant of the views of those who differed with him. His general reading was extensive, and he was especially interested in the reading of English literature. But few of his public addresses were ever printed. His address before the Essex County Agricultural Society, in 1883, is well written and shows much thought on the subject he had chosen. He was generous to a fault, and had always ready sympathy for the unfortunate. Few men with his income and means have left a larger legacy of valueless notes given for money loaned at different times by Mr. Thompson in the vain hope that he might save friends from financial disaster.

There was found in his private desk at home after his death, a printed rule of conduct which expressed the religion of his life. It was in the following words:

"I expect to pass through this life but once. If, therefore, there is any kindness I can show, or any good thing I can do to any fellow-being, let me do it now. Let me not defer it or neglect it, for I shall not pass this way again."

But it was in social life that Mr. Thompson's qualities shone with the greatest brilliancy. With a good degree of culture and knowledge of affairs—a remarkable memory—a keen, discriminating mind and most felicitous manners, he was always listened to with the greatest pleasure and admiration.

No one was truer or stronger in his personal friendships, or more beloved for his kindness, especially to the younger members of his profession, to whom he gave hearty words of encouragement, and in whose welfare and success he always took a deep interest.

He was most happy in all his family relations, and delighted in the joys and peace of his home.

The last year of his life was a continual struggle with a malady which was gradually weakening both body and mind, yet until the last, he indulged in the hope of resuming his labors. But his work on earth was finished—the drama of life closed, and his spirit, the spirit of a noble and just man, returned to God who gave it.

In behalf of the Essex Bar Association, I respectfully request that this memorial and a minute of these proceedings be entered upon the records of this Court.

Mr. Elbridge T. Burley, President of the Bar Association, seconded the motion that these proceedings be entered upon the records of the Court, in the following words :—

May it please your Honors :—If sincerity, self-control, energy, liberality, courage of convictions, a considerate and just regard for the rights of others, and an enlightened, sensitive and never failing conscience are the leading essential characteristics of manhood in its highest sense, Charles P. Thompson was one of nature's noblemen. And whatever of success he achieved in life is due, I think, in a great measure, to those traits of his character.

It was my good fortune to know him quite intimately for many years, and for his friendship and many virtues I trust I shall ever cherish his memory with a most affectionate regard.

Without intending in the least to disparage his judicial career, I cannot but think he will be best and longest remembered by this Bar, as one of its most active members, and, if there is given something of latitude under the license of eulogy, still it cannot be claimed that he was one of the great and gifted lawyers of his time.

He was, however, much more than ordinary, and was always equal to his best efforts and to all the responsibilities he assumed. Possessed of a good knowledge of men and

the practical side of affairs, and of that sound intuitive insight, misnamed common-sense, he was not easily misled or deceived. He was prudent in counsel, a courteous, manly and fearless antagonist, and a faithful and effective advocate, adorning his forensic efforts with an abundant flow of wit and humor. His influence on this Bar, while one of its active members, was elevating; for his professional and personal example was an inspiration; and to the credit and honor of this Bar, be it said, he was respected and beloved by us all.

But he was much more than the good and respected lawyer; he was a most devoted husband, a loving and indulgent father, a warm and steadfast friend, alike in sunshine and storm, and a most exemplary citizen.

As he was, for several years, one of the associate Justices of this Court, it may not become me to speak in this presence of his judicial qualities, but I venture only far enough to say that the Bar of the Commonwealth did not fail to recognize in him that sterling uprightness, without which men would be commissioned as judges, in vain.

It is most fitting that Bench and Bar should cease from their labors to pay tributes of respect to our worthy and honored dead, and I heartily second the motion addressed to your Honors by our memorialist.

Mr. Daniel Saunders spoke as follows:—

May it please your Honors:—We all know how transitory is the reputation of any lawyer, however eminent he may have been in his life time. There remains no record of his work however great and learned he may have been, or however brilliant his eloquence in the presentation of his clients' causes to the Court or jury. When the generation that knows him and his work has passed away, he is forgotten or known only by tradition. For this reason the custom of the Essex Bar, to present to the Court fitting memorials of departed brothers who have distinguished themselves by their capacity and integrity in their profession, and to ask that

they may be preserved in the records of the court where they have achieved their success, is fit and proper.

For nearly forty years Mr. Thompson has been known, honored and beloved in Essex County, as few men of any profession have been. I remember well his first coming among us; his cheery brightness, his delightful and witty conversational powers, and his gracious manners gave him a welcome which ripened into lasting friendships. He at once made a place for himself at the Bar, which he held during life; and the confidence, respect and love which was given him on early acquaintance, grew and strengthened as the years went by. Genial as he was by nature, generous, by inclination, most charitably tolerent of the faults and short comings of others, yet with himself he was stern and inflexible in the performance of what he considered duty. I have known him intimately since he first came among us, and have been with him, as associate or opposing counsel in many cases, and know how keenly sensitive he was lest any neglect of his might prejudice the rights of those he represented. The great care and attention which he gave to business entrusted to him, richly merited the success which he attained, and the confidence reposed in him by his clients. While full of wit and humor which added zest to his conversation and pleasure to all his listeners, there was an undercurrent of reverence for things sacred, and for the virtues of the Christian religion which he practised if not preached. With all his joyous nature, there was beneath the surface a serious contemplative mind, which looked upon life as given not merely for his own happiness and pleasure, but for the conscientious discharge of duty to others; and when life ceased to give him power to perform what he considered to be his duty, it no longer had any charm for him. Knowing him intimately as I did for more than thirty years, I believe his last act, when long illness had weakened a strong mind, and reason had given place to phantasm, was governed by the same sense of right and duty which had controlled his whole life.

For more than a generation he went in and out among us; known of all men as generous to a fault, scrupulous in the performance of every duty; truthful in all his relations; honorable in every action; while at the Bar trusted by the Courts, and when upon the Bench looked up to and esteemed by the Bar. He was loved by his friends; enemies he had none, and was honored and respected by all. No higher praise can be spoken of him than the record of the life he left behind him. When we go to our rest, happy will it be, if we leave behind us a record as fair and pure as his; a record in which any errors of life will be forgotten in the memory of its great and crowning virtues.

MR. HENRY P. MOULTON addressed the court as follows:—

MAY IT PLEASE YOUR HONORS:—The death of Judge Thompson brought to all who knew him a sense of personal loss to an unusual degree. And this is especially true, not only of those who were his lifelong friends, but also of those of us who entered the profession when he was in the vigor of his manhood, and all of whose recollections of practice down to the time of his death are associated with him. He will be remembered as a leading lawyer of this county; he will be remembered as a learned and upright judge, and of his sayings those will remain longest in memory which illustrate the peculiar gift of humor with which he was endowed.

But I think that any man would make a mistake, who, listening to Judge Thompson's genial conversation and seeing only the face that he wore to the world, would think that thereby he knew the man. The real man it was harder to know, not on account of any concealment, but because of a certain sensitiveness which I think was characteristic of him through life. I remember hearing him say, years ago, in the course of an argument to a jury, emphatically and impressively, "So long as I live I expect to be engaged in the performance of present duty." It seems to me that that was a guiding principle with Judge Thompson throughout the whole of his life. No man was more unselfish than he; no man recog-

nized more strongly the claims that others had upon him, or devoted himself more thoroughly to the performance of the duties that he felt were obligatory upon him, and when Judge Thompson died, a great, strong, hearty and unselfish personality went out of the world.

Of course such men are missed. We meet them too seldom in the course of our own journeys through life not to deplore their loss, and for many years the loss of Judge Thompson will be felt at the Essex Bar.

Mr. William H. Niles spoke as follows:—

May it please your Honors:—I should not be true to my feelings if I did not here express my sincere concurrence in all that has been said.

Mr. Thompson came to the Bar many years before I was admitted, but when I came I early learned, when I was in doubt or anxious as to my duty, to go to him for instruction and encouragement, for certain it was that no one ever went to him without finding a safe and faithful guide and helper.

There is scarcely a young lawyer at our bar who has not seen his great and noble heart; who has not felt his warm and generous spirit, and has not been to him and found an inexhaustible reservoir of strength, of purity, of noble, lofty character, and a fervor and sweetness of temper that never failed.

It is needless for me to say more. You who knew him so well feel more than any words of mine can express, and I close with the expression of a belief that the young men at our Bar, whether looking to the head or the heart, to a public, professional, or private life, will wait long before finding a purer, sweeter, or nobler example than they have in our late lamented friend and brother.

Mr. Frank C. Richardson addressed the court as follows:—

May it please your Honors and Brethren of the Bar:—It is with reluctance that I speak, because I am conscious of my inability to express myself satisfactorily, and yet

I should reproach myself if I allowed these exercises to close without declaring my respect and love for him in whose memory we have met. I am glad that I am permitted publicly to speak of his nobility of character. I had known Judge Thompson for many years. My earliest recollection of him is more than thirty years ago, when he came to my native town to conduct a trial before the local Justice. He was then young and brilliant, and I remember his great popularity with the people of that vicinity, which continued throughout his life. He had the respect and confidence of people to a remarkable degree. In a recent conversation with the Hon. John Prince, who has resided in Washington, D. C., for a long time, he said that Judge Thompson when in Congress was held in high esteem by all classes and all parties. I had known him as a public man, but my intimate acquaintance with him began in 1879 when I entered his office as a student, where I remained until his appointment as a Justice of this Court in 1885. During this time I saw him daily and I cannot recall in all that time a single unkind word spoken. I appreciated his intellectual gifts, I admired his sparkling wit and his ability as a lawyer and an advocate, but that which endeared him to me above all else was his friendliness and generosity. His sympathy knew no bounds, and his hand was ever ready to assist the poor and unfortunate. His life was crowded with noble and generous deeds. The last conversation I had with him was on last Christmas morning at his home. He was too weak to leave his room. He spoke of his work as a lawyer, and said that it was a great satisfaction to him to remember that all his relations with members of the Bar had been pleasant, and of their courtesy and fairness towards him. His last thoughts were of others, and his last words generous and loving. This noble, honest, manly man is dead. His death leaves a void that cannot be filled. Cannot we truly say of him that which the great dramatist makes one of his characters say of another,

> "His life was gentle; and the elements
> So mixed in him that nature might stand up,
> And say to all the world
> This was a man."

JUSTICE SHERMAN replied as follows :—

BRETHREN OF THE BAR :—When I came to this bar in 1858 I first met Mr. Thompson, who had preceded me, having taken up his residence in Gloucester the year before.

From that time until 1868, when I was elected to the office of District Attorney, I met him occasionally. For the next fourteen years we met frequently in the civil and criminal Courts, more frequently in the latter, as he had a large docket in that Court.

After I became Attorney General, in 1883, we met often, especially in the summer months, I, some years prior, having taken up my residence in Gloucester during the summer.

He was appointed to the bench in 1885, and I in 1887, after which time our relations were very intimate.

It is pleasant to remember that in the great number of cases we tried as opposing counsel, there never was an unpleasant word between us.

I was once asked by a former Justice of this Court, only slightly acquainted with Mr. Thompson, why it was that I manifested such great respect for and confidence in him. I answered, "Because he is such a royal good fellow and so honorable in his practice,—if he should tell me that I made an agreement a year ago about the disposition of a criminal case, of which I had no recollection, I have such implicit confidence in his integrity, I should carry out the agreement according to his understanding."

As a lawyer he had a good degree of success, not in the financial sense, but in giving to a large number of his fellow citizens the best of advice without charge or compensation, and in giving to a large clientage good ability and faithful services, with moderate charges.

He will be gratefully remembered by the citizens of Cape Ann as a lawyer who did not stir up strife, incite neighbor against neighbor, nor encourage litigation ; he was a genuine peace maker, and literally kept the attorney's oath,—'He would do no falsehood, nor consent to the doing of any in Court; he did not wittingly or willingly promote or sue any

false, groundless or unlawful suit; he delayed no man for lucre or malice; but he conducted himself in the office of an attorney within the Courts according to the best of his knowledge and discretion, and with all good fidelity as well to the Courts as to his client.'

Judge Thompson, as a member of the Legislature and of Congress, established a reputation as a man of ability and integrity.

Mr. Justice Thompson was a popular Judge; naturally such with his genial disposition, pleasant ways, ready wit, and love of anecdote, he could not be otherwise; he carried about with him wherever he went a large amount of sunshine. The lawyers, court officers and jurors, were glad to meet him in or out of Court.

With his associates upon the bench he was considerate and companionable.

"None knew him but to love him,
None named him but to praise."

He possessed a sensitive conscience; he wanted to do right, administer exact justice, and he was determined to do it in such way, and with such care, as to leave no doubt in the mind of any person as to his purpose and motive.

The pleasantest and happiest years of his life were those immediately preceding his last illness. He thoroughly enjoyed his position and work upon the Bench; he had a happy home, with a dutiful, affectionate and devoted wife; his son had passed the anxious years of boyhood into manhood and successful professional engagement; and a loving daughter, after long and anxious years of illness, had been restored to health, and everything seemed propitious for the future, and his friends expected he would reach the age of four score years.

But what seemed to us, who cannot understand the mysteries of life and death, a cruel fate decreed otherwise. He was cut down in the midst of his usefulness by a fatal disease which preyed upon both body and mind, until it so weakened the latter that life to him seemed a great burden, too great

finally to be endured longer. And as we think how terribly he suffered in those last days, of the agony of those last hours, can we say that perhaps, after all, it was not best?

While we shall miss him and mourn his loss, we may be comforted with the thought of how much better this part of the world is on account of his life and example. He did much to make the world better, to fill it with sunshine and happiness, and he has left behind him a reputation for honesty and integrity as firm and rugged as the rocks of the Cape where he dwelt.

As I go to my summer home by the sea, where he so often visited me, I shall feel constantly:

> "He will come no more,
> That friend of mine whose presence satisfied
> The thirst and hunger of my heart. Ah me!
> He has forgotten the pathway to my door.
> Something has gone from Nature since he died,
> And Summer is not Summer, nor can be."

In accordance with the request of the Bar Association it is ordered that their memorial with a minute of these proceedings be entered upon the records of the Court.

NATHAN W. HARMON.

At a session of the Superior Court in Salem, June 21, 1895, Justice Charles S. Lilley presiding, the following memorials were presented by Committees appointed by the Essex Bar Association.

Mr. William S. Knox presented the following

Memorial.

Nathan Williams Harmon, a member of this bar, died at Lawrence on the 16th day of September, 1887, in the 75th year of his age. He was born at New Ashford, in the county of Berkshire. His ancestors came to this country as early as 1635, and soon after settled at Suffield in the valley of the Connecticut, from whence their descendants came to western Massachusetts.

His early education was obtained at the Lanesborough Academy and at Stockbridge, and he entered Williams College in the class of 1836. Leaving college after he had remained there three years, he entered upon the study of law in the office of Governor Briggs, and was admitted to the Berkshire Bar in 1839. He subsequently practiced law as a partner of Governor Briggs at Lanesborough. He was afterwards at Adams, from which place he came to Lawrence in 1845, and entered upon the practice of his profession in partnership with Geo. P. Briggs, who was a son of the governor.

It was at Lawrence that his real life's work began and ended. The town had not then been founded, and the dam had not been completed. From the birth of what is now the city of Lawrence to the time of his death, the name of Judge Harmon was inseparably connected with its growth and progress.

In the planning and erection of its public buildings, the laying out of its streets and parks, in the establishment

and grading of its public schools, and in the preparation and adoption of its charter as a city, he took a deep interest, and rendered valuable practical services. He took an especial interest in the schools, and at the first town meeting held in Lawrence he was chosen one of the school committee, and often afterwards occupied a similar position.

At different times he served as City Solicitor, and always with fidelity and success. He was a member of the Massachusetts House of Representatives in 1857, and of the Senate in 1872, and was influential as a legislator. He held the office of Assistant Assessor of Internal Revenue during a portion of the administrations of Lincoln and Johnson, and brought to the decision of many novel questions arising under the law taxing incomes, his learning and training as a lawyer, and his conclusions were generally upheld by those with whom the final decision rested.

In 1880 he was appointed Judge of the Lawrence Police Court, and this office he occupied continuously until he resigned in 1887, the year of his death. He was an able judge, both of the law and the fact, and his judgments in civil cases were rarely appealed from. He presided with excellent temper, and was courteous and genial to all who had business in his court. A sense of humor and a vein of merriment were in his make-up. A good story and a hearty laugh were always welcome, and many a witty thrust at counsel or witness characterized his presence upon the bench.

As a lawyer, he was by nature endowed with a legal mind, and without much effort looked at legal questions from the correct standpoint. He was a good logician, and easily drew his conclusions, and applied principles to facts. He was sound in his opinions, and careful in his advice. He was a strong and determined fighter when stirred, and in court had more than ordinary power with the jury. Indeed, there were times, when he was fully aroused, when he would address a jury with a force and eloquence seldom excelled at the Essex Bar. He was a good student, and

great general reader. He had a most high sense of honor in dealing with the bench and his brethren at the bar.

He was fond of nature, and his days of relaxation were spent by preference in the wilderness. He had deep religious convictions, and was an active and earnest member of the First Congregational Church in Lawrence from its foundation until his death.

In behalf of the Essex Bar Association I respectfully request that this memorial and a minute of these proceedings be entered upon the records of this court.

Mr. William D. Northend said :—

Mr. Harmon commenced the practice of law in this County at the same time with my admission to the Bar. For many years until his appointment as Judge of the Lawrence Police Court, he had a good practice and showed marked ability in the trials of causes. His merits as a lawyer are truthfully described in the memorial which has been read, and I respectfully second the motion that these proceedings be entered upon the records of this Court.

THOMAS B. NEWHALL.

Mr. Dean Peabody presented the following

Memorial.

May it please your Honor:—On the twenty-fifth day of September, 1893, Thomas Bancroft Newhall, one of the oldest members of the Essex Bar, departed this life.

At a meeting of the Essex Bar Association, held on the twenty-eighth day of June last, a committee was appointed to prepare and present to this court a memorial of the deceased, and in fulfilment of the duty assigned it, that committee, in behalf of the association, now respectfully asks your Honor's attention.

Mr. Newhall was born in Lynn, October 2, 1811. He was the son of Asa Tarbell and Judith (Little) Newhall. His preparatory education was obtained in the schools of Lynn, and at Phillips Academy in Andover. He entered Brown University, and was graduated in 1832.

He studied law in the office of John W. Proctor in South Danvers, with Sidney Bartlett in Boston, and at the Harvard Law School. He was admitted to the Bar in March, 1837, and commenced practice in Lynn, in the month of April following.

In announcing to the Bar at Worcester the death of Judge Thompson, the late Mr. Justice Aldrich is reported to have said:

"The Essex County Bar, from a time far beyond the memory of any of us now living, down to the present day, has been one of the ablest in the Commonwealth—indeed, the old Bar of Essex County contained some of the giants of the law by whom the jurisprudence of Massachusetts was raised to the highest position of honor and authority, not only within but beyond the limits of the Commonwealth."

To any one familiar with the history and traditions of the

Essex Bar for the first half of the present century, the names of Leverett Saltonstall, Rufus Choate, Caleb Cushing, Asahel Huntington, Jeremiah C. Stickney, Nathaniel J. Lord, Joshua H. Ward and Otis P. Lord, will at once occur among the able, learned and brilliant lawyers of Essex County during that period; and when the language of Judge Aldrich is applied to such men it will not appear extravagant.

Inspired by the presence and example of these great lawyers, Mr. Newhall entered upon the practice of his profession with conscientious fidelity, and continued uninterruptedly for twelve years with very marked success.

In 1849 the Lynn Police Court was established, and Mr. Newhall was appointed its justice. He at once entered upon the work of organizing the Court and putting it in practical operation. The judicial business of the town had prior to that time been conducted by magistrates, who were not lawyers, and who were, in some instances, entirely incompetent for the work. For sixteen years Mr. Newhall performed the work of his office with ability, and with great success. But the faithful discharge of the duties of that office did not compel him to abandon his practice in the higher Courts, which increased with the growth of the town and city.

Endowed with sterling common sense, a vigorous and acute mind and a temperament that would endure long continued mental work, he brought to the study of the law an earnest and untiring devotion. Blackstone, Chitty and Starkie were his constant companions. The principles of the common law, he acquired and held with a clear and comprehensive grasp.

Although he had great confidence in his own judgment of what the law ought to be, when overruled, he readily yielded to the authority of well considered judicial decisions.

With the increase of equity jurisdiction came the necessity of a thorough knowledge of the principles that govern equity proceedings, and to that work Mr. Newhall applied himself with his accustomed zeal and fidelity. As he was a skilled pleader under the old system of common law proceedings, so he became proficient as an equity pleader when

the business of his profession demanded it. He studied law as a science, and to become master of its principles. The discussion of legal principles was always full of interest to him. He read all the cases decided by our supreme judicial court as they appeared, and became familiar with the law of each case. No reading was more interesting and attractive to him than a well-considered legal opinion. With a mind eminently judicial, and enriched with the results of careful and discriminating reading and study, Mr. Newhall was well equipped for the highest order of judicial work.

A learned judge, a strong and persuasive advocate, a judicious and wise counsellor, Mr. Newhall did not allow his views of the duties and amenities of public and social life to be obscured by his devotion to professional work. He was not a mere lawyer. He was ardently interested in whatever tended to promote the growth and prosperity of the town and city of his birth, and to him was granted the great privilege of beholding a town of five thousand people become a city of sixty thousand, and the leading industry conducted in little shops by the wayside, develop into one of the leading industries of the country, prosecuted in large and expensive manufactories. No one watched this expansion and growth with greater pride and pleasure than he. While he never sought office, he was always ready and willing to perform his part in the public service when his fellow-citizens called him. Whatever tended to promote the interests and advancement of the public schools received his cordial support, and for many years he served his city on its school board. Not unlike most graduates, upon leaving college he substantially laid aside his college books and college studies when he found himself confronted with the labors and anxieties of an exacting profession. Still he retained enough of the knowledge acquired in college of the Latin language to enable him to render much valuable service to the classical department of the high school. Although naturally conservative he was always ready to advocate and adopt any improvements in the methods of instruction in the schools,

which the experience and wisdom of the best educators had approved.

He was not an extensive reader of books, but his tastes were scholarly and he read good literature with a lively appreciation of its treasures. He read the current literature of the day sufficiently to enable him to keep abreast of the times, and to understand the drift of modern thought in politics, science, art and religion. His reading was such as to furnish him with a vocabulary of apt words and phrases, and to give to his written productions a chaste and pure style.

He maintained a youthful spirit through his entire life, and in his business relations with his brethren at the Bar he was always considerate and accommodating. It was a source of pleasure to him to advise and counsel young men in the profession, and he never seemed more satisfied with himself than when discussing some legal proposition with a young brother who had come to him for his legal opinion. He gave advice freely and cheerfully to such, and the only compensation which he desired for such service was the satisfaction of seeing his perplexed brother made happy, as he removed difficulty after difficulty from his mind.

The woods and the fields and all that makes the natural world attractive and alluring were dear to him. A ramble in the forests or a ride through some quiet and secluded by-way, afforded him great pleasure. His personal appearance was that of a refined and cultivated gentleman. His presence was a benediction.

His religious faith was adopted after mature thought and study. The doctrines preached by the elder Channing he most cordially accepted, and for the greater part of his life he was identified with the Unitarian denomination. While he held these views firmly, and intelligently, he cultivated a spirit of willing tolerance and broad charity. He tried to put himself in the place of others so far as to understand their points of view and to comprehend their motives and spirit, and, in doing this, he usually learned to respect their purposes, even if he could not endorse either their opinions or their methods.

In that faith and with that spirit, our friend and brother, honored and beloved, dwelt among his kindred and went in and out before the people for eighty-two years.

May it please your Honor: I now move, in behalf of the Essex Bar Association, that this brief memorial be placed upon the records of this Court.

Mr. William H. Niles spoke as follows:—

May it please your Honor:—Nearly three years before I was born, Thomas B. Newhall, our honored friend and brother, was admitted to the Essex County Bar, and had entered upon the practice of law in Lynn.

He had been thirty years in active practice when I first knew him, and yet my acquaintance with him covered more than twenty-five years of his subsequent life. Of course my connection with him was not as close or intimate as was that of brother Peabody, still, during the last fifteen years of his active life, I met him almost daily, and came to know him well and to honor him most highly.

It was not a difficult task to know or to understand him. He had no mysterious ways or traits. He was easily approached by the young or the old, by the rich or the poor alike. He was frank, open and outspoken, and though he was exceptionally mild and polite in manner, he was direct and emphatic, so that he never left one in doubt as to his meaning or position.

As a lawyer and gentleman he was of the old school, able, industrious and studious. Always candid and conscientious, his opinion was sought and safely followed by many of our wisest and best citizens, for his clientage was certainly one of the largest and best ever enjoyed by any lawyer in Lynn. With him, as has been said of another, "The practice of law was indeed a profession," and his presence and influence was a continual object lesson and incentive to young lawyers to aspire to the noblest and best.

He was refined, dignified and scholarly in his personal appearance, and his pleasant voice and light, quick step when

nearly eighty years of age, were like those of a young man of twenty-five.

His conversation was at all times so pure and select that it could not offend the most sensitive ear, and his taste was for the plain, simple and unostentatious,—spurning all pomp and hollow display.

My brother Peabody has not forgotten, and I must not forget, that above all Mr. Newhall was a modest and a truthful man. Nothing was more distasteful to him than indiscriminate, fulsome, or unmerited praise. He would have us paint him as he was, and in this brief mention of his life and character I have said no more than would be endorsed by all who knew him well.

We have asked the attention of the Court to the memory of a distinguished brother who entered upon the duties of his profession in Lynn, near the place of his birth, and who, at the end of his long professional career, longer by far than that ever attained by any other lawyer now living or whoever lived in Lynn, his place of business at all times to the last being within a few hundred feet of the place where he began his professional life, departed from us, leaving not one stain upon his record as a citizen, as a lawyer, or as a judge.

In view of these facts I desire to second the motion which has been made, that the address presented be placed upon the records of this Court.

Judge Rollin E. Harmon said :—

May it please your Honor :—I desire also to second the resolutions upon the death of Judge Newhall. This meeting has for me a special interest. By a strange coincidence, among the names of those it serves to commemorate are the only three members of the Bar with whom I was ever associated, either as student or partner.

Before I became associated with Judge Newhall I had read law in the office of my dear father, and had been for a short time in the office of brother Jones. I was there long enough to learn to respect his solid and manly parts and to prize much

a friendship which continued until his death. Of my father you will not expect me, nor can I trust myself to speak, but you will understand how this meeting comes to have for me a grave and solemn interest which no similar occasion can possibly have.

It is fitting to seek in every way to preserve the memory of such men as Judge Newhall. For over fifty years he practised law, in his native town, and obtained the respect and complete confidence of the community. He was a man of good natural powers, clear in apprehension, quick and strong in grasp of mind, and of excellent judgment of the relative value of things, than which there is no better gift. He had the best collegiate and professional education, was a student of law all his life, and enjoyed no reading more. He also had great experience in all the public and private affairs and business of the community. He thus became the best of counsellors, not only in all legal matters but in everything requiring care and judgment.

The main value of his life work lies in the ability and fidelity with which he performed these duties. It was in his office work chiefly that I knew him. We forget, in looking for some brilliant effort in speech, how worthy and useful a life work is rounded out within the walls of the office of every conscientious lawyer.

The manner and ease with which he did this work and the success which attended it, is very remarkable. He was a great, but not an anxious, caretaker, bearing constantly on his mind the interests of others, and especially those of the poor and ignorant, many of whom were his clients, and whom he cared for as if his wards.

In his relations with all men he acted as if he expected them to act honestly and deal fairly. If advantage was possible on a lower plane of action he deemed it no part of his duty to discuss it with his client, or to distract and tempt him by it.

He was also very considerate and unselfish in his dealings, especially with his clients. I cannot but think these quali-

ties added much to the respect and confidence he inspired in all to a degree, which, within my observation, has never been exceeded.

His work in the courts was well done, but was subordinated to those of the office, by his own choice. He was an apt speaker, keen, logical and pleasing, but more and more the risks and excitement of uncertain causes grew distasteful to him, and he withdrew from them.

It is a cheering reflection that the closing years of his life were full of contentment and quiet enjoyment. He received great pleasure and satisfaction from his work and loved his office as much as any place in the world. There was to be found in it, also, much social life and friendly intercourse of which he was the life and centre. It was delightful to see him straighten back in his chair, and recall memories of his law school days under Judge Story, and of the great lawyers of the county and state, in the first half of the century, or of the strong and quaint characters of his native town.

His character was mature and fixed when I first came to know him. He had an honorable and stainless life of the utmost integrity and faithfulness; yet such was his modest manner, that he exhibited no salient features. He practised but did not display the moral virtues. He seemed to live wholly free from temptation, so far had age, habit and high character clarified the sources of his action.

How thin and pale all this seems beside the picture of the man ever in my mind, I need not say. My connection with him was most intimate and unbroken during all my professional life, and inexpressibly tender and grateful and loving is my memory of this best of teachers and dearest of friends.

JEREMIAH P. JONES.

Mr. Ira A. Abbott presented the following

Memorial.

May it please your Honor:—In behalf of the Bar Association of this county and in observance of a custom of the Essex Bar, I present this memorial sketch of one of its honored members deceased.

Jeremiah Pingree Jones was born in Wilmot, Merrimac County, N. H., April 23d, 1819. His parents were Nathan Jones, a native of Sutton, N. H., and Mary Pingree, his wife, born in Ipswich, in this county. His ancestors on both sides, for some generations back, were plain, farming people, without any trace of scholarly or professional blood, so far as can be learned, yet at the age of fourteen he was already determined to have a collegiate education if possible. His father could not afford him much aid beyond the common schools of the town, but, with him, to determine was to do if it lay within his power, and he somehow managed to pursue the preparatory studies at the academies at Gilmanton and Meriden which enabled him to enter Dartmouth College in the class of 1842, and in it he graduated in due course. In the class with him were the Honorable Lincoln F. Brigham so lately deceased, Gen. Harrison C. Hobart, J. D. Philbrick, long identified with the public schools of Boston, and others of note.

How severe was the struggle which this long climb up the hill of learning cost him we may partly gather from the record of his school teaching, then the principal and perhaps still the favorite resource of students of limited means. His first school was in the winter of 1836-7, when he was only seventeen years old, and he taught more or less in every succeeding year until the time of his admission to the bar.

Soon after his graduation he came to Georgetown in this

county, where relatives of his mother resided, and began the study of law, continuing to teach a part of the time in schools in the vicinity. He did not attend any law school but, according to the general custom of the time, read in the offices of practising lawyers, mainly with Jeremiah P. Russell, Esq., at Georgetown, but in part with Nathaniel J. Lord, Esq., at Salem. He was admitted to the bar at the September term, 1845, of the Court of Common Pleas, at the same time with Hon. Wm. D. Northend of Salem, after an examination by Judge Washburn of that court, who personally attended to a duty, as the practice then was, of which the Judges have since been relieved by a committee of the Bar.

Mistakenly, as it must seem to us, he decided to remain in Georgetown, a place where there could have been but little prospect of professional advancement. Nevertheless, in that limited field, he soon taught the Bar of the county to respect the courage, the perseverance and the learning which he put into every cause, no matter how insignificant, which was intrusted to him. It came to be understood that he was an antagonist by no means to be lightly regarded. He had none of the graces of oratory and was never even a ready speaker but he thought clearly, expressed his ideas forcibly and above all, knew his case thoroughly.

In 1863 he decided to commence practice in Haverhill, and entered into partnership with Hon. Henry Carter, who was already established there. This connection was not of long duration, however, as his partner was made Justice of the Police Court of Haverhill in 1868.

He remained without a partner from that time until his oldest son was admitted to the bar and became associated with him. A few years later, Mellen A. Pingree, Esq., was admitted to the firm, which thereafter remained unchanged, until the decease of the senior member. His reputation continued to grow with the profession, and it was no unusual thing for him to furnish a written opinion to some brother lawyer who desired to have the advantage of his judgment and research.

He was often selected to serve as auditor or referee, and in work of that kind showed that he possessed in a high degree the qualities which fitted him for judicial position which he would very likely have held if his political faith or the practice of the appointing power in taking political affiliations into account had been different. He was for some years a member of the committee to examine applicants for admission to the Bar.

In the course of his nearly half a century of practice he had a considerable number of students in his office, who, without exception, came to entertain high respect for his learning, and a warm liking for him as a man. To his clients and their interests he was so absolutely true that his brethren at the Bar sometimes thought him too stiff and unyielding in his necessary dealings with them. But it was entirely foreign to his nature to sacrifice the slightest right of a client to professional amenities, or for the gain of another client, much less for any advantage to himself.

Although his reading was by no means confined within professional lines he wrote but little aside from what bore directly upon his work. This was due, however, to his intensely practical nature, which led him to produce only when a definite use for the product was in view, and not to lack of ability. On the occasion of the visit, in 1867, of the great philanthropist, George Peabody, to Georgetown, which was the birthplace of his mother, Mr. Jones was selected to deliver an address of welcome in behalf of his townspeople. Having thus a duty laid upon him he so performed it as to elicit warm praise from those who heard or read what he said, and from Mr. Peabody himself the statement made later, it is said, to a mutual acquaintance, that it was the best address in the large number made to him during his tour in this country. Even in that speech of welcome and eulogy his devotion to the useful asserted itself, and he turned aside from the illustrious guest to impress upon the schoolboys present what he conceived to be the lesson they should learn from the life of the man in whose honor they

were assembled. It may well have been that feature of his address which especially commended it to Mr. Peabody, who was himself practical in the highest degree.

As a citizen of his adopted town, in which he retained his residence to the last, he was a model of faithfulness to civic duty, ready to assist in whatever seemed to him right, and, what is more rare and more essential to the makeup of the true citizen, he was equally ready to oppose what seemed to him wrong, at whatever cost. He held various positions of honor and trust in Georgetown ; that of town clerk, member of the school committee for many years, president of the Georgetown Savings Bank and trustee of the Peabody Library.

Although a Democrat in a town almost invariably giving its vote to Whig and later to Republican candidates, he was in 1851 elected a representative of the town in the General Court. In that capacity he was a member of the Judiciary Committee, and was instrumental in having the time allowed to administrators and executors for the settlement of estates reduced from four years to two.

A few months prior to his election to the General Court he married Elizabeth (Spofford) Nelson, daughter of Nathaniel Nelson of Georgetown, and connected with the well known Spofford family of our county. In the home thus established, with his wife and the six children born to them, he found, no doubt, the chief pleasure and satisfaction of life. To strangers and mere acquaintances he seemed reserved and even at times repellant, but this aspect was only the barrier behind which an inborn and never eradicated diffidence led him to retire for self protection.

Those who, after due inspection and delay, were admitted within that barrier as friends, found there a man with as warm and true a heart as ever beat. With his family the barrier never existed; the restraint which elsewhere often chained his tongue was unknown in his home. There he was social, genial and companionable in the highest degree.

Mr. Jones made no religious profession, as it is termed,

but he was reverent toward God and most broadly tolerant and charitable toward the genuine religious beliefs of all, while his life was singularly upright and free from reproach.

His wife and all his children survived him and he escaped all severe domestic affliction. His later years were cheered and gladdened by the success and honorable standing already obtained at the bar of this county by his two sons, Boyd B. Jones, Esq., and Nathaniel N. Jones, Esq.

In the course of nature "it is not given to man to choose the opportunity of his death," but if it had been granted to him to choose he would hardly have made it otherwise than as it happened. He had passed the usual limit of life and the "losing," which is "true dying" had already set in with him, no more to cease but with life itself.

On the morning of Nov. 7th, 1892, he left home to attend to business in Salem and Boston. He completed what he had to do in the Probate Court at Salem, went to Boston and as far as the steps of the new Court House. There at the entrance of our chief temple to that mistress in whose service he had spent all his mature years, he sank down unconscious and thus passed, almost in a moment, from the activities which had formed his life work, to the world beyond.

MR. WILLIAM D. NORTHEND seconded the motion that these proceedings be entered upon the records of the Court, in the following words :—

MAY IT PLEASE YOUR HONOR :—I was admitted to the Bar in the Court of Common Pleas at the same term with Mr. Jones, and enjoyed an intimate acquaintance with him from that time to the time of his death.

For many years he practiced law in Georgetown, where, and in neighboring towns, I frequently met him in the Justices' Courts. In these Courts, in that period, although with a much more limited jurisdiction than now, all lawyers practiced. Some of the most interesting anecdotes of Rufus Choate and of the Lords, senior and junior, are of incidents in their trials in these Courts. Mr. Jones had also a consid-

erable practice in the higher Courts. After he opened an office in Haverhill, his business increased largely, and he became widely known and respected as a very accurate and reliable counsellor. He engaged largely in office business, but in the cases he had in the courts he was always well prepared, and his pleadings were carefully and admirably drawn. He was thoroughly grounded in the common law, and although he was a diligent reader of the decisions of the courts, yet I think in his legal opinions he was governed more by his knowledge of the principles of the law than by the results of a comparison of the different decided cases.

Mr. Jones was very modest and unassuming. In brief addresses made by him on public occasions he showed much culture and literary taste. He was respected and beloved by his brethren of the bar, to whom his whole professional life was a worthy example.

I most cordially second the motion that the excellent memorial just read, be entered upon the records of the Court.

CHARLES SEWALL.

Mr. Charles A. Sayward presented the following

Memorial.

May it please your Honor:—The Essex Bar Association, in accordance with its long established custom, appointed a committee to prepare a memorial of Charles Sewall, a member of this Bar, who died at his home in Salem on the fourth day of April, A. D. 1894.

The committee has performed this duty and respectfully submits its report.

Mr. Sewall was born in Rockport, in this county, November 2, 1835. His parents were Levi and Mary A. Sewall. He was a direct descendant of Henry and Jane (Dummer) Sewall, through their son John, brother of Chief Justice Samuel Sewall of Colonial and Provincial fame.

He commenced his education in the public schools of his native town, and fitted for college at Thetford Academy in Vermont. He entered Yale College in 1853, where he remained two years, when he left for Brown University, from which he was graduated in 1857.

After completing his collegiate course, he studied law in the office of Stephen B. Ives, Jr., in Salem, and was admitted to practice October 7, 1859. He soon after opened an office in Salem, and by untiring industry and perseverance acquired an extensive practice.

He was a man possessed of a high degree of honor, and while exacting in what was due to himself and his clients, he was careful to render all that was due from him to others. He was honorable in all his dealings with his clients and with his associates of the Bar. His word was as good as his bond, and no one ever complained that he had broken his promise or forgotten its terms.

He was a close student, thoroughly devoted to his profes-

sion, and worked out the law and the facts of every case faithfully before entering upon a trial.

In the court room he maintained his position with courage and ability, and always acquitted himself creditably with court and jury.

He was interested in all public affairs and had strong convictions on all public measures. He served the city of Salem six years on its School Committee, and was a strong and able member of that Board. He was treasurer of the Essex Bar Association for twenty-one years.

Mr. Sewall was devotedly attached to his home and family. The shadow of death fell across his threshold and one child after another passed to that bourne whence no traveller returns, and when the last, a daughter, slept in death, his courage was broken, and the toils and duties of his profession became a burden. "His whole head was sick, his whole heart was faint," and after struggling a few years, he laid down the burdens of life and slept with his fathers.

In his death the Bar has loss an honorable member, the Court a worthy officer.

In behalf of the Essex Bar Association, I respectfully request that this memorial and a minute of these proceedings be entered upon the records of this Court.

Mr. Charles W. Richardson seconded the motion of the memorialist as follows:—

It is perhaps superfluous for me to attempt to add to the able and truthful memorial of the committee; but there is one thing in the professional life of Mr. Sewall that especially attracted my attention, and that is, his great success in inspiring confidence in his clients.

It is found to be one thing to do faithful and successful work, but quite another matter to have clients appreciate your exertions.

Our brother was preeminently successful in this. He not only put enthusiasm and zeal into his work, but he so wrought, that this enthusiasm was communicated to those

who employed him, and they were assured that their attorney was doing everything that was possible to be done for them.

This was quite apparent to me during Mr. Sewell's life, as we had neighboring offices, but I appreciated it still more after his death, when the duty devolved upon me of settling his office matters. I then came in contact with his numerous clients, and they almost, if not quite universally, expressed the utmost satisfaction with the work done for them, and sorrow for his untimely death.

The death of Mr. Sewall is one of the saddest in the history of our Bar Association. Of naturally strong constitution, he was at length broken down by the weight of affliction. By all the rules of heredity he should have completed the full span of life. He has told me himself that originally he had a constitution like leather; but domestic affliction came upon him with repeated blows and crushed him. It must be remembered that his domestic affections were very deep, and to be deprived one by one of a numerous family, some of them taken away by strange fatalities, was enough to destroy the strongest, and his shattered strength was not able to resist the power of disease when it came.

During his life his many bereavements excited the strongest sympathy among the members of the Bar, which sympathy is now extended to those he has left.

I most cordially endorse the memorial presented and second the motion that these proceedings be placed upon the records of the Court.

EBEN F. STONE.

Mr. William D. Northend presented the following

Memorial.

There are few more impressive thoughts than those which come to us of departed friends. They have been taken from us in the bloom of youth, in the strength and glory of manhood, and in the maturity of age, nevermore to be known on earth. In a moment the book of their earthly life has been closed. With Christian faith, trusting in an Infinite Wisdom far transcending the conception of mankind, we meet this—to us—impenetrable mystery. With us who survive, all thoughts of the departed are in the solemn past. We cherish in memory the virtues of the deceased and the lessons of their lives.

We have been called upon to part with a brother who not only earned distinction at the Bar, but exerted a wide and beneficent influence in the performance of many important public duties.

Eben Francis Stone was born in Newburyport, Aug. 3, 1822, and died Jan. 22, 1895. His parents were Ebenezer and Fanny (Coolidge) Stone. His first ancestor in this country was Elias Stone, who settled at Charlestown, and was married to Abigail Long in 1686. On the maternal side Mr. Stone was descended from the Coolidges and Storers, of Boston, and from the Moodys and Titcombs, of Newbury. His ancestors were largely engaged in commercial pursuits.

Mr. Stone's father was a man of sterling character. Caleb Cushing, in speaking of him to a friend, said he considered "Major Stone (he was a major in the militia) a model citizen, and altogether the best man in the town." His mother was a woman of estimable qualities, of great enthusiasm in good works, and possessed of a cultured literary taste. She died in Newburyport at the age of eighty-three. Mr. Stone's home

in his boyhood was a very delightful one. His first teacher was Mr. Alfred W. Pike. Afterwards he attended the school of Mr. Charles Pigeon, and for a short time was a pupil in the High School. At the age of fourteen he entered Franklin Academy in North Andover, where he remained until fitted for college. While at North Andover he lived in the family of the Rev. Bailey Loring, the father of the late Hon. George B. Loring. He entered Harvard University in 1839, and was graduated in 1843. He then entered the Harvard Law School, from which he was graduated in 1846. He was for about one year librarian of the Law School Library. He was admitted to the Bar in Essex County in 1846, and immediately entered upon the practice of his profession in Newburyport, which from that time to the time of his death was his home.

Mr. Stone was married to Miss Harriet Perrin, of Boston, Oct. 20, 1848. By this marriage there were born to them three daughters,—Harriet Child, now Mrs. Alfred Hewins, Fannie Coolidge, and Cornelia Perrin.

Mr. Stone had little inclination for the general practice in the courts. This may be accounted for in part by his early interest and employment in public affairs. The routine of the ordinary business in the courts was irksome to him. Although for many years he tried cases, and tried them well, yet he failed in that love for and enthusiasm in the trial of causes which are necessary to the proper discipline of the faculties for the work. For success in the trial of causes involving facts, quick conceptions, a mind always on the alert, and the faculty of thinking on one's feet are essential; and these come largely from practice.

But upon questions of great interest, in which principles were involved, he showed very great ability. It required an important and exciting occasion to bring out his full powers. He was learned in the law, and possessed of a sound, discriminating, and impartial judgment, which gave him great influence in the various public and private affairs in which he engaged.

It is a somewhat general but mistaken view that the reputation and usefulness of a lawyer are confined to his practice in the courts. However valuable and popular his skill in the examination of witnesses, and great the delight in his powers of advocacy, yet a large field for reputation and usefulness is open to him in the performance of the more unostentatious duties of his profession.

The services of the profession are of very great value in all of the more important positions and vocations of life. A large proportion of the members of Congress and of the Legislatures of the several States are men educated in the law. This results, not from any claim of precedence on the part of the profession, but from the fact that the education and discipline of its members best qualify them for the most important of the duties of legislation. The public needs their services, for which it makes requisition.

So in the conduct of the great business affairs of the world their knowledge and advice are a necessity.

They perform a very useful service in checking litigation. Few outside the profession know the difficulty of preventing parties from engaging in lawsuits. Honest-meaning men, warmed in a controversy, not only insist on bringing suits, which once commenced, are sure to entail protracted and unhappy disputes, but in their zeal fail to disclose to their counsel important facts favoring their opponents. It requires wisdom and experience to deal with such parties, skill to draw out all the facts, and patient and dispassionate reasoning to dissuade the beginning. Instead of encouraging lawsuits, it is one of the most difficult of a lawyer's duties to prevent them. There is no profession more open to the wit of the satirist than that of the law. The characterizations of the practitioners are proverbial. Yet, as one of the best lawyers in this county remarked, "although all men abuse lawyers, no one abuses his own lawyer." The client, in his distress, will disclose to his counsel what he will not to a man of any other profession, and will trustfully confide to him his dearest and most important interests. When I speak of law-

yers I mean lawyers, not the reptiles which infest not only the legal, but every other profession.

Mr. Stone, in his admirable address at the dedication of the Court House in Salem, expressed his feelings in regard to the ordinary trials, which, in the early days of his profession, and much more since, in accordance with the spirit of the time, have been largely contests for pecuniary ends, in his description of "a clever practitioner who has sufficient knowledge of cases and of the rules of practice in the courts to conduct a case skilfully from its entry on the docket, through its ordinary stages, to judgment and execution, and sufficient shrewdness to deal successfully with the arts and devices by which a doubtful case is brought to a favorable conclusion. Such men may do good and useful work, and acquire and deserve a respectable standing with the distinction that comes from pecuniary success ; but he has no high aim, no adequate conception of the true office of jurisprudence."

Mr. Stone was a member of the Senate of Massachusetts in 1857, 1858 and 1861. The legislature of 1861 convened at a most critical period. We were then on the eve of our sectional war, when the whole country was in a state of the greatest excitement. War was imminent, and measures were adopted in anticipation of it. The " Personal Liberty Bill," as it was called, containing unconstitutional provisions, and being justly considered as offensive by the people of the South, was referred to a committee of the legislature for examination, and, if necessary, for revision. Mr. Stone was chairman of that committee. From his known anti-slavery views those who did not know the fibre of the man were apprehensive that the radical pressure against any modification of the act might influence him.

After a full hearing and consideration of the subject, Mr. Stone, for the committee, reported to the Senate a bill for the repeal of the obnoxious features of the act. This was met by a strong opposition from the radical members. The Senate was nearly equally divided on the measure. At a time when Mr. Stone was engaged in a committee room the

opponents of the measure succeeded in bringing it before the Senate. Mr. Stone received information of the fact. In a few minutes, while the subject was under discussion, he entered the Senate chamber. He thought that he had been unfairly treated by this attempt to pass upon the report of the committee in his absence ; and the moment an opportunity offered he addressed the Senate in an impassioned and very eloquent speech, denouncing the attempt that had been made and defending the report of the committee. Upon a vote the subject was postponed. After various and strenuous efforts to defeat the measure, it was finally adopted by a small majority.

A few weeks after the close of the session Fort Sumter was fired upon. Governor Andrew conferred with prominent members of both Houses; and, after the preparation of bills it was deemed necessary to pass, he called an "extra session," which was held. Mr. Stone took an active part in the preliminary work, and himself drew up the bill for the support of the families of volunteers, and was very influential in the important work of the session.

In November, 1862, Mr. Stone was commissioned by Governor Andrew, colonel of the 48th Regiment, which was enlisted for nine months, but was in service about one year at Baton Rouge and at Port Hudson.

Judge Edgar J. Sherman, a captain in the Regiment, writes :—

"Colonel Stone was a conscientious and painstaking officer, looking carefully to the health and efficiency of his command, faithful to every call and duty, and calm and courageous in the hour of danger. The officers and soldiers in his command entertained great respect for him as an officer and ever-increasing admiration for him as a man."

In 1865 Mr. Stone entered into a law partnership with Caleb Cushing in Washington, with a view to removing there, but after a practice of about one year, he became dissatisfied with the place, and returned to Newburyport.

Mr. Stone was a member of the House of Representatives

of Massachusetts in 1867, 1877, 1878 and 1880, and in the fall of 1880 he was elected a representative to the Forty-seventh Congress, and was re-elected to the Forty-eighth and Forty-ninth Congresses. During the time of this service Mr. Stone was on important committees, and performed a large amount of labor. No one can read his very able speech on the proposed breakwater at Rockport without a feeling of deep regret that he did not oftener address the House. That, I am informed, was the feeling of those in the House who knew him best.

Besides the qualities and accomplishments which have been mentioned, Mr. Stone was a man of letters. His address at the dedication of the new Court House in Salem is a model of literary excellence, and his speech in Congress upon the River and Harbor Bill, and his papers on Governor Andrew and Tristram Dalton, read before the Essex Institute, and printed in its Collections, are very finely written. He was among the last of the type of lawyers of the county who associated letters with the law. In his address at Salem he made a quotation from a recent article in the London *Spectator* upon the retirement from office of two eminent Scotch judges, of which I give a part:—"In Scotland, as elsewhere, the competition for the loaves and fishes is becoming keener in all professions, and the lawyer finds himself hustled out of literature by the trained public writer and man of letters." In his comment on this Mr. Stone said, "This change is inevitable. As society progresses the conditions of success in the various pursuits become more and more scientific and exacting. And yet there was a charm in the social condition which caused the old alliance between law and letters, which we cannot lose without regret. Life was then more interesting and picturesque. Each man's work was less sharply defined, and the distinctions that now separate classes did not exist. Men were selected for special service, not because of special training, but because of supposed natural fitness. The judge on the bench was not the learned lawyer, but the man who was thought by his fellow-citizens to have the judicial

faculty. Every man of natural superiority took two or three different parts. The minister was doctor and farmer as well. The lawyer was the squire of the village, who supplied the demand for literary or oratorical services in default of the scholar and the trained man of letters,—the fruit of a more luxurious and advanced civilization."

There can be no better evidence of the respect with which the people of his native city regarded him than his election or appointment to so many local offices of trust and responsibility affords. Besides the public offices which have been stated, he was, at different times, mayor of the city, a member of its Common Council and its president, city solicitor, a member of the School Committee, and director in or trustee of the most important financial, educational and charitable institutions of the city.

Mr. Stone was especially distinguished for his integrity and native nobility of character. He was modest and unassuming in his manners, and never made any attempt at display, or did anything for sensational effect. He had an ambition for preferment, but never did, or could, resort to any of the arts of the politicians. He stood simply for what he was. He held decided opinions, which he never disguised or compromised for political ends. He stood solely on his merits as understood by those from whom he sought support. He was independent, yet never defiant or censorious. He was very tolerant of the opinions of those from whom he differed. He was never narrow in his views, and his mind was ever open to the arguments of his opponents. He was never a strictly party man. He believed fully in the necessity of united action by those of the same general political beliefs, but reserved the right of individual judgment upon all measures proposed. He never fully consented to all the policies of his own party. All measures were subjected to the crucible of his "unclouded reason." He had great moral as well as physical courage. He felt a personal responsibility in the performance of his public duties, and did right as his reason pointed out the right, without inquiring whether his course would be popular or how it would affect his political future.

In private life Mr. Stone was beloved and respected by all who knew him. With a mind eminently practical, and stored with knowledge derived from books and from his large and varied experiences, he was most interesting and instructive in conversation and in discussions in literary societies. He was true and unswerving in his friendships, and most happy in the delights of his family circle. He left to his friends and this community a priceless legacy in the example of an honorable and useful life.

Such a life as Mr. Stone's is a contribution to the great tide of human advancement through influences which cannot be weighed, or measured by time.

> "Were a star quenched on high,
> For ages would its light,
> Still travelling downward from the sky,
> Shine on our mortal sight.
> So, when a good man dies,
> For years beyond our ken
> The light he leaves behind him lies
> Upon the paths of men."

I respectfully request that this memorial be entered of record in this court.

Mr. George W. Cate seconded the motion of Mr. Northend in the following words :—

It is nearly thirty years since I became acquainted with Col. Stone; that acquaintance soon ripened into a warm, personal friendship, which continued until his death. During the past twenty-five years I have been at times associated with him, have tried cases before him as auditor and referee, and in all these relations have been impressed with his ability, his dignified bearing, and his never failing courtesy. He was, in many respects, an extraordinary man. His intellectual attainments were of a high order. He possessed a wonderful versatility of intellect. As a counsellor he was wise, cautious and reliable. He had an analytical mind, and saw clearly the strong and weak points of his case, marshalled his facts skilfully, and applied the law with a wise discrimi-

nation. He preferred to deal with facts and principles rather than isolated cases and precedents founded on technicalities.

Col. Stone was a patriot; a man of positive ideas, with the courage of his convictions. His acts and words were the expressions of conscientious conclusions. He left his happy home, his large professional business, his native city, ever dear to him, to defend the imperilled institutions of his country. He led his regiment in the field with great credit to himself and to the entire satisfaction of his superior officers. Almost regardless of his personal safety, he never asked a soldier to go where he would not lead. After the war, he was for a short time connected with the internal revenue department, but this did not suit him. Newburyport in due time elected him as a representative to the General Court. Previous to the war he had served as a member of the House and Senate. Here his previous experience, his ability, and his sterling integrity enabled him at once to take a high rank. As a debater he was argumentative and convincing. His influence was always for what he considered right; but however strong his convictions, he never did an unmanly act to carry a point. He was three times elected to congress. It was during his term of service that the French Spoliation claims came up for adjustment, and on this Col. Stone made one of the ablest speeches which was made during the session, in which he dwelt largely with the principle of subrogation. He was not a frequent debater in the House, choosing to talk before the committee, and thus have the bills come through the proper channel, backed by the report of a committee. As a member of congress he was faithful to, and watchful of the interests of his district. For any dishonest scheme he was disqualified by his mental makeup, by the honesty of his heart, by his conscience, and every instinct of his manhood. His general reading, his broad and catholic views, his unquestioned integrity, endeared him to all with whom he came in contact. As a lawyer he was true to his clients, and the court. As a soldier he was patriotic and brave. As a statesman he was wise and sagacious. As

a citizen he represented the best type of New England manhood. I respectfully second the motion that the Memorial presented, be entered upon the records of the Court.

Mr. Justice Lilley replied as follows :—

Gentlemen of the Bar:—It was not my fortune to know personally any of the brethren whom you have lost, and to whose worth you bear testimony today.

I am only privileged to claim professional kinship with them. Yet, as I listen to these graceful and affectionate tributes ; these brief sketches presenting, as the limited time afforded us will only permit, the salient traits of each of them, and what may be called the central features of his life work, a familiar figure appears before me, which, without the aid of personal acquaintance, commands my respect and admiration. That of the upright lawyer, discharging with zeal and fidelity the duties devolving upon him in the various departments of our profession. As the incorruptible magistrate, dispensing justice with an even hand from the bench ; as the counsellor seeking to establish and adjust controverted rights and liabilities by timely advice, by friendly conference, and by reasonable concession, rather than by hasty appeals to the courts ; as the advocate at the bar, striving by fair and skilful examination and by legitimate argument to discover and promote the truth, rather than to make the worse appear the better cause. When the life of such a man is closed it is indeed fitting, as has been the custom of the Essex Bar for half a century, to take some formal note of the event. In a notable address delivered some years ago, from which you will permit me briefly to quote the sentiments to which an occasion like this gives rise, were thus eloquently expressed by a distinguished lawyer in a neighboring state.

"I am reminded of the infelicity which attends the reputation of a lawyer. To my thinking the most vigorous brain work of the world is done in our profession. And then our work concerns the highest of all temporal interests, property, reputation, the peace of families, liberty, and life even. The

world accepts the work, but forgets the workers. The waste hours of Lord Bacon and Sergeant Talfourd were devoted to letters, and each is infinitely better remembered for his mere literary diversions than for his whole long and laborious professional life work. The caricatures of Dickens on the profession will outlive, I fear, in the popular memory, the judgments of Chief Justice Marshall, for the latter were not burlesques, but only masterpieces of reason and jurisprudence. The victory gained by the counsel of the seven Bishops was worth infinitely more to the people of England than all the triumphs of the Crimean war. But Lord Cardigan led a foolishly brilliant charge again a Russian battery at Balaklava and became immortal. Who led the great charge of the seven great Confessors of the English Church against the English Crown at Westminister Hall? You must go to your books to answer. They were not on horseback. They wore gowns instead of epaulets. The truth is we are like the little insects that in the unseen depths of the ocean lay the coral founda tions of uprising islands. In the end comes the solid land, the olive and the vine, the habitations of man, the arts and industries of life, the haven of sea and ships riding at anchor. But the busy toilers which laid the beams of a continent in a dreary waste were entombed in their work and forgotten in their tomb. Yet the infelicity to which I have alluded is not without its compensations. For what after all is posthumous fame to him who brought nothing into this world and may carry nothing out? The dead leave behind their reputations alike with their estates. We may justly console ourselves with the reflection that we belong to a profession which, above all others, shapes and fashions the institutions under which we live, and which, in the language of a great statesman, 'is as ancient as the magistracy, as noble as virtue, as necessary as justice,'—a profession, I venture to add, which is generous and fraternal above all others, and in which living merit is appreciated in its day according to its deserts, and by none so quickly and ungrudgingly as by those who are its professional contemporaries and its competitors

in the same field. We have our rivalries, who else has more? But they seldom produce jealousies. We have our contentions. Who else has so many? But they seldom produce enmities. The old Saxons used to cover their fires on every hearth at the sound of the evening curfew. In like manner, but to a better purpose, we also cover at each nightfall the embers of each day's struggle and strife. We never defer amnesties till after death, and have less occasion, therefore, than some others, to deal in post mortem bronzes and marbles. So much we may say without arrogance of ourselves, so much of our noble profession."

The several memorials will be entered upon the records of the court, as moved, and as a mark of respect to the memory of our deceased brethren this court will now adjourn.

ELBRIDGE T. BURLEY.

At a meeting of the Essex Bar Association held September 14, 1896, Messrs. Horatio G. Herrick, Charles C. Dame, William H. Niles, Boyd B. Jones, and Henry P. Moulton were appointed a committee to prepare a memorial of Mr. Elbridge T. Burley to be presented to the Supreme Judicial Court.

Memorial.

In the Supreme Judicial Court held at Salem, December 15, 1896, Justice Barker presiding and Justice Hammond of the Superior Court sitting with him, Mr. John P. Sweeney for the Bar Association, presented the following memorial.

May it please the Court:—At the request of the committee appointed at a recent meeting of the Essex Bar Association to arrange for appropriate action on the death of our brother, the late Elbridge T. Burley, which occurred on the first day of September last, I rise to present the following memorial.

Elbridge Tyler Burley was born at Newmarket, in the state of New Hampshire, on the 10th day of January, 1842. His father was James Burley and his paternal ancestors for several generations had been born and bred in or near Newmarket. His mother, Lucy A. Davis, was of a family long identified with the neighboring town of Barrington. On both sides he was descended from plain, farming people, such as constitute the native yeomanry class of New England, the product of the early English, Scotch and Irish immigration, modified and developed by the struggles of life on the rocky soil of the granite state. From them he inherited a strong constitution, a large capacity for work and those mental and moral traits which distinguish the best type of New England people. While he had none of the

advantages of opportunity that spring from wealth or influential social position, his parents were able to provide him with the ordinary educational training of the schools of his native town supplemented by a course of study at Phillips (Exeter) Academy.

He began the study of law with William B. Small, Esq., of Newmarket, a lawyer of considerable repute in southern New Hampshire, and completed his law course in the office of Daniel Saunders, Esq., at Lawrence in this county. He was admitted to the Essex Bar in the year 1865, and from that time to the day of his death was engaged in the uninterrupted practice of his profession, his office and residence being at Lawrence. From the year 1889 he had been president of the Essex Bar Association, and since 1890, one of the Board of Law Examiners for this county. With these exceptions and a period of service as city solicitor of Lawrence, he never rendered any services of even a semi-public character. He neither sought nor held public office disconnected with his profession. He was a lawyer in the strictest sense of the word, and by his work as such, won his chief distinction.

If it be true that the fame of even the greatest lawyer is but transitory, there is some compensation in the fact that, even during his lifetime, the estimate of the merit and achievements of a lawyer by his associates at the bar is apt to be discriminating and just. It is possible that laymen may be deceived in this respect; that showy and meretricious qualities may for a time win outside applause; but in the esteem of the bar no one wins a higher place as a lawyer than that to which his ability and industry justly entitle him. There is no profession so free from jealousy and that spirit of envy that would detract from the just tribute due to superior excellence. Social attributes, however potent in other fields, cannot supply deficiency of learning at the bar, nor does the lack of social graces prevent the recognition of well earned distinction. In this respect the judgment of the bar is inflexible and impartial. The lawyer can neither

deceive himself nor his associates as to his ability, and the arena of the courts is a field of contest where merit—and merit alone—bears away the palm.

Mr. Burley's standing at the bar of this county and of the Commonwealth, was for many years well established and universally conceded. It was at the forefront, in the foremost rank. He was a competitor worthy of any antagonist, well skilled in the art of legal attack and defence. His position was a well earned distinction, the result of strong native ability and the unremitting devotion which the jealous mistress of the law exacts from those who seek to enjoy her favors. He was a natural lawyer, born to the profession, the possessor of what we call a legal mind, quick to apprehend the principles of the law and to foresee their logical development in the solution of new questions. Joined to this natural aptitude was the capacity for continuous labor which stored his mind with a wide and thorough knowledge of precedents. He had a strong liking for his profession and he pursued it with the ardor of one who regarded it not merely as a means of livelihood, but as a science worthy of his best intellectual effort. As a consequence, he was never lax in the performance of professional duty, but always came to the trial of a cause with a clear understanding of the facts and a careful preparation of the law. In all his work he aimed at absolute accuracy and was never satisfied with anything less either in himself or in others.

Although short in stature he had an imposing aspect. With a shapely and well-set head, a keen eye and a clearly cut, intellectual face he looked every inch a lawyer, and whether before the bench or the jury his appearance was calculated to command attention. While making no pretensions to oratory, he was fluent in speech without being prolix, terse and direct in expression and always earnest in his manner. These qualities, coupled with an intimate knowledge of New England character, rendered him a strong and convincing advocate before a jury. In cases involving questions of deceit he was particularly effective. He had a keen

scent for fraud and would pursue it with unflagging zeal until he laid it bare before the bench or jury. There were few witnesses so hardened in corruption as to be able to withstand his searching and relentless cross-examination.

He was a successful lawyer from the beginning, the preliminary period of waiting having been with him very brief, and his services were each year in increasing demand. His practice, although a large and lucrative one, measured by the standards of this county, might have been much larger had he desired it. He was not ambitious for an extensive practice, however, preferring to do only such work as he could do thoroughly. Like every true workman in any calling, he cared more for the quality than the quantity of his work, and when engaged in the preparation of an important case, he would lock his office door and deny himself to all callers for days at a time. During the last years of his life, his professional engagements led him to make a special study of the law of wills and by his successful conduct of several contested will cases he acquired a fame that was not limited to this county alone, but extended throughout the commonwealth.

His demeanor towards the court was always irreproachable. He had an exalted ideal of the judicial character, and he cherished it with the utmost fidelity. While always firm and insistent for the rights of his clients, he was respectful to the court and frank to the very extreme of candor.

In his dealings with his associates at the Bar, as with the world at large, he was the very soul of honor. He was utterly incapable of any artifice or deceit. He entertained what are considered by some to be old-fashioned ideas as to the dignity and proprieties of the profession, and he had a lofty scorn for those modern methods which seemed to him calculated to degrade the practice of the law. His love for the profession was deep and enduring, its history and traditions were to him sacred and venerable, and he repelled an assault upon it as he would an attack on his personal honor. He constantly strove by precept and example to elevate and ennoble it, and as a member of the Board of Law Examiners he aimed to

maintain a high standard of acquirement and character at the Bar. If to some careless student of the law he seemed too exacting, those who were prepared found him an appreciative listener, and all must have been impressed by his high sense of duty and his devotion to what he considered the interests of the public.

He had the same lofty conception of the duties of citizenship. He was intensely patriotic in the true and noble sense of the word. Although he always remained in private station, he exerted a powerful influence for good in the community in which he lived, and he was ever ready to lead in any movement that promised to advance the common welfare. Mentally and morally intrepid, he never shrank from a conflict with the foes of public order, and his services were always in demand and were freely given in every public emergency. His aggressiveness in this respect made enemies of those whose schemes he thwarted, but won the admiration of every lover of manly principle.

Remarkable as were the mental traits, which enabled him him to become an eminent lawyer, his greatest endowment was his forceful moral character. Like all men who achieve real distinction in any walk of life he had a strong personality, a well-marked individuality. He was not a merely negative character influenced solely by his environment, but a positive force from which irradiated a powerful influence upon those with whom he came in contact. Chief among his moral traits was his honesty or love of truth, a trait which was so strongly implanted in him by nature that it needed no cultivation to develop it. It was this quality which animated and gave color to his whole life. He had an absolute devotion to the truth and he followed unflinchingly wherever it led. So intense was this loyalty to truth that he went to extremes in her service and, as he was wont to forcibly express what he strongly felt, he sometimes appeared harsh and uncharitable in his judgment of men and their motives. He had not only a contempt for such sham and hypocrisy as were hurtful, but even the conventionalities of life sometimes fretted and dis-

turbed him. Yet if he was critical in his estimate of others, he was no less rigorous with himself. He had ever before him a high standard of duty and he compelled himself to render the same quality of service that he exacted from others. Life was with him a serious thing; it had not only its pleasures but its responsibilities, and to be remiss in the performance of duty was with him no trivial fault. He had a sensitive conscience. He was not adapted to advocate an unworthy cause or to defend with mere technicalities. He was oppressed and burdened by a case of doubtful merit and he could not conceal his feelings; but in what he conceived to be a just cause, no matter how desperate, he was a tower of strength and could display a moral courage that was sublime. In the expression of his opinions, he was absolutely fearless. Indifferent to popular applause and undismayed by popular enmity, he resolutely laid his course along the strict line of duty.

While he was not a social man in the popular sense of the word, he took a lively and kindly interest in the welfare of his neighbors and acquaintances. He had an especial predeliction for elderly people with whom he delighted to converse. He had but few intimates, but to those whom he honored with his friendship he revealed traits of character that were charming and attractive. His emotions lay very near a surface that was somewhat austere, and were quick to respond to the claims of the wretched and the unfortunate. He could not contemplate physical distress or mental suffering of any kind unmoved, and his generosity was bountiful but unobtrusive. Under a severe exterior, he carried a warm and compassionate heart, full of sympathy for the afflicted, and alive to the misery of those who trod the humble paths of life. He was thoroughly democratic but without a trace of demagogism. He believed in equality of rights, and his sense of justice was strong and impartial.

He was a lover of good books and a diligent and discriminating reader outside of the law. He had a strong regard for the standard poets, especially for those whose verses com-

memorate the plain and simple virtues of life, and he was able to quote from them copiously.

The strong attachment for nature in all her moods which he imbibed as a country boy abided with him through life. He was a lover of the woods, the streams, the mountain and the shore and he had an intimate knowledge of the habits of wild birds and animals, the study of which was to him a constant delight. It was in the woods that he found relaxation from the cares of life and it was on one of his annual excursions to the wilds of Maine that death claimed him while yet in the prime of life and in the full vigor of health. The news of his death came as a sudden shock to his friends, for his naturally strong constitution and correct habits of living justified the expectation that he would enjoy a ripe old age.

In his death a notable figure has passed away; a strong, forceful character; a power for good whose beneficent influence will be missed, especially at this Bar and in the community in which he lived.

As a lawyer he was eminently skillful and learned, an honor to the profession.

As a citizen he was upright and public spirited.

As a friend he was kind, generous and true.

Looking back upon his career and viewing him in all the relations of life, we deem him worthy of the laurel, and we ask for him a place upon the honored roll of those departed members of the Essex Bar who, each in his day and generation, have contributed to the public weal.

Mr. Henry P. Moulton seconded the request of the memorialist as follows:

The announcement of Mr. Burley's death came to his friends and associates as a shock and a surprise. So long as his brethren at the Bar knew him, he was a man in the full possession of bodily strength, with a mental power not impaired by years, but matured and strengthened by a long and varied experience. For more than thirty years he had practised his profession in this county, and his reputation was not con-

fined to the limits of the county, nor even to those of the Commonwealth. He had long been looked upon as a learned lawyer, a safe counsellor, and a logical and convincing advocate. That he was a man of marked individuality was apparent upon the slightest acquaintance with him. It may be true, as a general rule, that men think the thoughts of others and are inclined to accept readily conventional standards of life and conduct. Such suggestions have little application to Mr. Burley. He deliberated and attained his own results; he acted on his own carefully formed opinions; he had a high standard of moral and intellectual attainment; it was a standard of his own, and by it he measured the acts, opinions and words of himself and others. If at times his censure was too severe, he never spared himself. He was a man of strong feeling and opinion and of high principle. Such men are sometimes wrong, but never intentionally unjust. He was a man of the highest integrity, a lover of justice, a lawyer whose talents and learning were devoted not only to the advantage of his clients, but to the benefit of the community where his influence was felt, a man who, by living well, has lived long, and has left behind him the record of an honorable and useful career.

I respectfully second the request that the memorial presented by Colonel Sweeney may be placed upon the records of the Court.

Response of Mr. Justice James M. Barker:—

I regret that it was not my privilege to have had more acquaintance with the brother whose life and services are fitly spoken of in this memorial, and which are the subject of your thought at this time. It so happens that during all of the years that I have been upon the bench, this is the first court of my own that I have held in Salem, the first jury of Essex county that I have seen, and that my personal acquaintance with the work in court of Essex lawyers has been that which has come under my observation when they have appeared in other counties.

I early heard of the standing, the reputation, the services of the brother whose memory youdes ire to perpetuate. The justices of the court upon which I first served, coming from sittings in Essex county, were wont to speak of the men who were prominent at the Essex Bar; and always that talk and conversation included the mention of Mr. Burley. I do not know how many times the late Mr. Justice Pitman, the late Chief Justice Brigham and other justices of the Superior Court have spoken of him in my presence, and always with appreciation of his learning, of his integrity, of his sympathy with truth and of his scorn of wrong, always with appreciation of the great value of his life and services. Understanding that this memorial was to be presented at this sitting, I spoke with my present associates, and particularly with the Chief Justice of the Supreme Judicial Court, with reference to what should be said about Brother Burley, in response to such remarks of the Bar as should be made on this occasion. The Chief Justice said to me that I need not hesitate in saying that in the opinion of the Court he was a lawyer whose memory was eminently worthy of being perpetuated by a memorial to be spread upon the records of the Court, and that whatever was said by Mr. Burley had the seal and stamp of the utmost truth and fidelity, both to his clients and to the Court.

I remember years ago, when I was a young lawyer, seeing come into my own county a figure which seemed to me one of distinction and of strength; and I think that all of the members of the Essex Bar will say that when the late Otis P. Lord appeared you saw a man from whom you expected decisions of strength and vigor. And when first it was my fortune to see Brother Burley, I said to myself, "Here is a strong resemblance to Mr. Justice Lord." I do not know whether it has been remarked by others, but it was by me.

I never saw Mr. Burley in court but a few times, but when I heard him argue before the full bench I was reminded of the resemblance and impressed with what is also stated to be the fact in these memorials—that he was a man of learning,

of directness of purpose, of force, a man whose bearing and whose statements showed that what he said was the result of reflection and of meditation, and, in fact, a man forceful, strong, having confidence in himself and as it seemed to me deserving the confidence of others.

I did not know whether it would turn out to be so, but I wondered upon first seeing him whether he was of that strong band who come into Massachusetts from the North to render service and attain distinction. It turns out that he was, and also that he was in the habit of going back yearly to his mother state, and planting his foot upon his native soil, to renew his strength and vigor by communion with nature.

It seems to me that it was fitting and proper for the Essex Bar to have seen to it that this memorial, carefully prepared, appreciative and true, should be presented to the Court, and preserved in the records of the county in which he lived.

The fact that the Bar attend in numbers at this presentation, the fact that my brother (Mr. Justice Hammond of the Superior Court) has adjourned his Court and has come to listen to the action of the Bar, all shows that our departed brother was worthy of this testimonial.

The motion of the Bar is acceded to; this memorial and such of the remarks as have been made in seconding it, as the Bar may desire may be spread upon the records of the Court, and, as a further mark of appreciation of the services of our departed brother, this Court will now stand adjourned.

STEPHEN H. PHILLIPS.

At a meeting of the Essex Bar Association held in the Court House at Salem, April 26, 1897, a committee consisting of Messrs. James A. Gillis, Wm. D. Northend, Daniel Saunders, Dean Peabody and John W. Porter was appointed to prepare a memorial of Mr. Stephen H. Phillips, to be presented to the Superior Court.

Memorial.

In the Superior Court held at Salem, June 17, 1897, Justice Sheldon presiding, Mr. James A. Gillis for the Essex Bar Association, presented the following memorial.

May it please the Court:—It is a trite observation concerning lawyers, that however distinguished they may be, however great their triumphs at the Bar and however wide their fame, their work is in general such that the recollection of it soon fades away, and in a few generations there remains only the name in connection with their cases in the Reports, which themselves tend to become antiquated, and less and less referred to as new principles and new decisions take their places. It is therefore the custom of the Essex Bar to cause to be made a brief but permanent record of the history and character of its members for the perusal, and possibly for the example, of those who shall follow them in the practice of their profession.

In accordance with this custom a memorial of Stephen Henry Phillips, long a prominent and distinguished member of this Bar has been prepared.

Mr. Phillips was born in Salem, August 16, 1823, and died April 8, 1897, being nearly seventy-four years of age. He leaves a widow and two sons, Stephen Willard and James Duncan.

He came of a distinguished ancestry. His father was Stephen Clarendon Phillips, born in Salem; in earlier life one

of the few remaining merchants of commercial Salem, for several years a member of Congress, the second Mayor, and chief organizer of the schools of Salem, and always an influential and highly valued citizen of his native city. Going back to remoter times we find as his ancestor, the Rev. George Phillips, an eminent divine and a founder of Watertown, who landed with Winthrop, in Salem, in 1630. His descendant, Deacon Stephen Phillips settled in Marblehead, of whom it is recorded, that he there presided as moderator of a stormy town meeting in 1773, called to make protest against the Boston Port Bill. His grandfather, Stephen Phillips, was a leading merchant and citizen of Marblehead. From the same ancestor, Rev. George Phillips, were descended the Andover Phillipses, who gave the name to the Academies at Andover and Exeter; the Revolutionary Patriot of Boston, William Phillips; his son Jonathan Phillips, the first mayor of Boston; and at a later day, Wendell Phillips and the lamented Phillips Brooks.

In 1836, at the age of thirteen, Stephen was placed in a classical school at Washington, his father being then in Congress, and he entered Harvard College in 1838, graduating in 1842, and thereafter spent three years in the Dane Law School at Cambridge. Among his associates there were the late President Hayes, Chief Justice Peters of Maine, Chief Justice Morton of Massachusetts, Chief Justice Bradford of Rhode Island, and others who have since risen to high distinction in their profession.

After graduating at the Law School he entered the office of the Honorable Benjamin R. Curtis of Boston, and was admitted to the Suffolk Bar in 1846, connecting himself in business with the Honorable George P. Sanger, afterwards a judge of the Court of Common Pleas. For four years, from 1847 to 1850 inclusive, he was editor of the Law Reporter. In 1850 he removed his office to Salem where his active practice as an advocate may be said to have commenced. In 1851 he was appointed by Governor Boutwell District Attorney for the County of Essex, which office he

held two years, resigning at the end of that time, when the Honorable Alfred A. Abbott was appointed in his place.

In 1856 and 1857 he was the city solicitor of Salem, and in the latter year, at the age of thirty-four, he was elected Attorney General for the Commonwealth. He served in this office three years, but declined a fourth nomination. His able and faithful assistant in this office, mainly in the preparation of cases for argument before the Supreme Bench, was William G. Choate, since United States Judge for the District of New York.

While Attorney General he was appointed by Governor Banks Judge Advocate General of the Massachusetts Militia.

In 1866, Mr. Phillips accepted an appointment from King Kammehamaha as Attorney General of the Hawaiian Government, this constituting him one of the four cabinet ministers. Subsequently he performed the duties of Minister of Foreign Affairs and also acted at times as the Minister of Finance.

These islands of the Pacific though small in extent have been for many years and for various reasons the object of especial interest to other and more powerful nations, and the duties which Mr. Phillips was called upon to perform in the discharge of his different offices were in many respects of a difficult and delicate nature. It was no easy task to reconcile conflicting interests, foreign and domestic, to restrain the influences which might tend to the detriment of the country which he represented, and still to keep in touch with the Governments with which Hawaii maintained diplomatic relations. That he was equal to his task and that his duties were satisfactorily performed, appears from the fact that he remained in the cabinet till it was dissolved upon the death of the King and the accession of a new ruler.

In 1871 Mr. Phillips married Margaret, daughter of the Honorable James H. Duncan, of Haverhill, for some years a member of Congress for Massachusetts. In 1873, he returned to this country and established himself in San Fran-

cisco, practising his profession there for some years. He was chosen President of the Harvard Club of that city. He then returned to Salem, where, with the exception of a short residence in Danvers, he remained until the close of his life.

Though always taking a great interest in politics, Mr. Phillips was not a politician. He never held in this country any office other than a professional one. At the time he came to the Bar the anti-slavery sentiment of the North was crystallizing in the Free Soil movement, the precursor of the Republican Party of 1856. Into this movement and subsequently into the formation of the new party he entered with characteristic energy and ardor. In 1856 he was a delegate to the first Republican National Convention where Fremont was nominated, and the writer well remembers the impression made by his speech at a ratification meeting at Salem, and the eloquent and finished eulogium which he delivered upon the services and character of the nominee. He was also a delegate to the National convention of 1860, when Lincoln was the Republican nominee.

From the inception of the party and throughout the war he labored earnestly and effectually in the support of its principles and its administration, faithfully and loyally adhering to it till his departure from the country for Honolulu.

Mr. Phillips, however mindful of other duties, was above all a lawyer. To him the practice of his profession was of absorbing interest. At the Law School and in the office of Judge Curtis he was a diligent and devoted student and he had the advantage of the ablest teaching. Professor Greenleaf, and Judge Story of the United States Supreme Court, were both lecturers at the School in his day, and he would often speak of them, particularly of the latter upon whose quaint remarks and apt illustrations he would like to dwell. He entered upon his profession thoroughly equipped, his mind fully stored with legal principles, and success came to him early.

In his offices of District Attorney and Attorney General (both of which impose great responsibilities upon the incum-

bent and demand of him judicial qualities as well as those of the advocate), he showed a great legal acumen, a business capacity of a high order, and a spirit of justice and humanity towards all with whom his duties brought him in contact.

It is worthy of mention that while holding this latter office it became his duty to prepare the papers under which Judge Loring was removed from his position of Judge of Probate in Suffolk County by process of address by the Legislature to Governor Banks, an event which caused great excitement at the time and which was wholly without precedent in Massachusetts.

A marked instance of his tact and skill in the management of men may be found in his dealings with the workmen of Lynn at a period succeeding the financial crisis of 1857, when a serious and general strike was impending not only in that city but in other parts of Essex county. Mr. Phillips went quietly over to Lynn, addressed the workmen, and his calm and judicious counsel was largely instrumental in averting the threatened disaster.

In 1860, when about leaving office he was appointed, with ex-Governor Clifford, Commissioner in the matter of the Rhode Island boundary. They were in Washington upon this business, and in the latter part of January, 1861, they there addressed a confidential letter to Governor Andrew, setting forth that they had been authorized by Mr. Stanton, then Attorney General in Mr. Buchanan's cabinet, to say that it was his opinion that there was imminent if not inevitable peril of an attack upon the city of Washington between the 4th and 15th of February. Governor Claflin, in his address in 1871 upon the unveiling of the statue of Governor Andrew, attributes to this letter the advanced state of preparation which enabled Massachusetts regiments to be among the earliest to reach Washington, when President Lincoln issued his first call for troops.

In his general practice, as well as when acting in his official capacity, Mr. Phillips was careful and painstaking, preparing his cases with diligence and trying them vigor-

ously and effectively. In the regular routine of his office practice, I think there were few lawyers who could compare with him. No one familiar with his early career could have failed to notice his systematic care of papers, his methodical arrangement of business, his strict and conscientious regard for the rights and interests of his clients, his determination not to allow his cases to lag or fall behind their proper time of trial.

He was a fluent speaker, having great command of language and rising easily to flights of eloquence. As an example of graceful and impressive oratory, the writer calls to mind his remarks before the Bar at the time of the decease of Chief Justice Shaw.

He had much personal influence with juries. His fine and prepossessing appearance, his fairness in presenting his case, his freedom from anything like artifice or attempt at sophistical reasoning, could not but make a favorable impression. His arguments were some of them models of their kind, terse, vigorous and logical, and whether before court or jury, they were marked with one peculiarity: he seldom made much reference to the arguments upon the other side. He did not take them up one after the other, and endeavor to refute them, as is sometimes done, but he presented his own views in his own way, his mind apparently running in its own groove and following out its own train of thought.

Another distinguishing characteristic was his courage and his entire confidence in himself. He never shrank from any encounter nor from any odds. Though ardent and aggressive in the trial of his cases, he never overstepped the limits of decorum nor failed in that politeness and good treatment which he felt was due to his brethren at the Bar. But his combative instincts were by no means wanting, and if aroused by what he thought unjust or unfair treatment of his client or himself, his opponent was given ample opportunity to know that there were blows to take as well as blows to give.

Mr. Phillips never mingled largely in general society, finding great comfort and pleasure in his home and with his

books. His memory was most tenacious, and his stores of accumulated knowledge were always at his command. His information he seemed to assimilate perfectly, making it a part of himself. In speaking of some historical occurrence he would not refer to an author, or suggest that "such and such a one remarks." What he knew he knew; and however acquired, it was not to him the product of another mind, but became, as it were, a part of the texture of his own.

As one instance of his power to preserve a polite accomplishment amidst the cares of a busy life, it may be mentioned that in Salem, a few years ago, he addressed an audience of French Canadians upon political subjects in their own language.

His incursions into general literature were largely in the direction of history and biography, his mind, essentially practical, dealing with men and with the world and what he found in it; but he enjoyed poetry of a high order. In this field his favorite reading was Paradise Lost, whose lofty theme and stately movement seemed especially congenial to his taste. He was not much given to theological or philosophic speculation. Of these he spoke little, nor much of his religious belief; but those who knew him best, knew that he had a simple faith and that he held it firmly.

In this brief memorial the effort has been not to write in a strain of unvarying eulogy, but to present to some extent a discriminating picture of Mr. Phillips' character and life. Time does not permit me to speak of his pleasant manner, his genial disposition, his kindness of heart, his attention to young men, his readiness to lend a helping hand. There are those who will never forget their obligations to him for favors rendered in a quiet and unostentatious way, but which in some instances have affected the whole lives of their recipients.

When Mr. Phillips commenced his practice in Salem, Nathaniel J. Lord, then perhaps the leader at the Bar, was just retiring with broken health. Mr. Huntington, long the distinguished prosecuting officer of the Essex District, had

become clerk of courts; George Wheatland was just resuming his practice at the Bar; Judge Lord was fast rising to that eminence which awaited him; Judge Perkins, afterwards practising extensively in the courts, was then upon the Bench of the old Court of Common Pleas; Judge Thompson was in Benjamin F. Hallett's office in Boston; Eben F. Stone, at the commencement of his career, librarian in the Dane Law School, was a young man, giving promise of his future distinction; Judge Choate had been admitted to the Bar, and Stephen B. Ives was pursuing his studies in the office of Messrs. Northend & Choate; in Middlesex, a group of able lawyers, occasionally appearing in cases in this county, were in practice, among them General Butler, Judge Abbott, G. A. Somerby, Theodore H. Sweetser, J. Q. A. Griffin, and George F. Farley.

Upon the Supreme Bench was Chief Justice Shaw, with Wilde, Dewey, Metcalf, Fletcher and Bigelow as his associates. In this Court Caleb Cushing was soon to take his seat. John H. Clifford was the Attorney General.

Among these distinguished men, and others now living, Mr. Phillips took a recognized place. Those whom I have named, and he, have played their part upon the stage of life and have passed away; but with those who knew these bright ornaments of the Bench and Bar, who have met or walked with them in the paths of the law, their memory will be always green.

In behalf of the Essex Bar Association, I respectfully request that this Memorial be entered upon the records of the Court.

Mr. William D. Northend said:

The memorial that has been read is a truthful and just tribute to the memory of Mr. Phillips. My acquaintance with him commenced on the opening of his office in Salem, we were thrown much together in our practice, and a strong friendship grew up between us which continued to the last. I can bear witness to his conscientious efforts to prevent de-

lay in the trial of his cases which at times caused temporary irritation on the part of the opposing counsel who were more lax in their practice. He prepared his cases carefully and was ready on all points of law raised on a trial. He was prudent in his examination of witnesses and argued his cases ably and sometimes with great eloquence. He was a thorough student of the law; he prepared a treatise upon law which he was prevented by illness from completing.

In private life, Mr. Phillips was one of the most estimable of men. He had a remarkable memory, and in the society of his friends was most interesting.

I cordially second the request that the excellent Memorial just read be entered upon the records of the Court.

Reply of JUSTICE HENRY N. SHELDON:—

BRETHREN OF THE BAR:—Although it was never my good fortune personally to meet the late Mr. Phillips, it is no less a pleasure to me than to you that so just and discriminating a testimonial to his worth should be put upon record for the instruction and example of those who are hereafter to practice at this bar. It has been well said in your memorial that the fame of a lawyer, however brilliant and distinguished may have been his professional achievements and triumphs, and however great and far-reaching the services which he has been able to render to the community in which he lived, and to other communities, as was the case with our deceased brother, can be but ephemeral. In a few days he is gone; and the busy associates who labored in his company in his lifetime can scarcely do more than occasionally to recall the fragrant memories of his career; in a few days more, they too rest from their earthly labors, a new generation comes upon the scene; and his very name becomes unfamiliar in the haunts of living men. And yet it is not well that we should regard this as a hardship peculiar to the members of our profession; it is the common lot of man.

> "Whatever 'scaped oblivion's subtle wrong,
> Save a few clarion names or golden threads of song?"

The memory of the individual may and does fade away; but the result of the good work which he has done remains as a permanent advantage to his race. The increasing purpose which runs through the ages, the continued progress of humanity, its advancement in sound intelligence and good morals, its growth in wisdom which lies at the foundation of all development spiritual, mental and material,—all these are not only manifested in but result directly from the separate lives of those individual members of the community who, each in his own sphere, each with that degree of influence which varying circumstances enable him to exert, do the particular duty that comes to each one of them, render, both by direct action and by force of example, what service they can to their fellowmen, their country and their race, and thus contribute—each one perhaps, however brilliant his talents, and however dazzling his successes may seem to us, only in a slight degree, and yet surely each one in some degree and to some extent,—to the furtherance of the divine scheme in which it is at any rate our privilege to strive that we may be co-workers. And it seems to me that it is one of the advantages of our profession that we are sometimes able to contribute more largely than if we were engaged in some other field of labor towards the attainment of this end. I do not need here, speaking to you the representatives of the bar of this county, to emphasize or even to dwell upon the services which a learned, laborious and conscientious bar render both to individual men and to the country. It is our object to assist in the ascertainment of truth, in the administration of justice, to secure to all their rights, to prevent injustice and wrong doing; and however we may sometimes fall short of success, however flagrant may be some of our failures, it is yet, I think, true that in the main right conclusions are arrived at in our courts of justice; and that the theory upon which our law is framed and administered, that in all disputed matters of law or fact, justice is best attained by affording to each litigant the ablest and keenest professional assistance with an impartial tribunal to pass finally upon the

issue, is borne out and sustained by the results. Still, as you all know, the best work of the practising lawyer is not done in the court-room; it must be done in his office, as the wise adviser of those who resort to him, looking not alone to bare legal rights, but to the real and lasting advantage of those who consult him, and to the general good of the community. The integrity of the really upright lawyer is not a mere abstraction, his good will to mankind is not a merely vague and easy-going feeling of good nature; his patriotism is not content with expressing itself in platitudes about his country; he knows and pursues the right, not only as defined by the law of man, but in that deeper as well as more practical application in which the law of man does not attempt to deal with it. He is not a stirrer up of strife; rather, he composes differences, both by wise avoidance and by actual reconciliation or judicious compromise. Renown may be but a builder of tombs; wit may be but a life estate; the best and strongest of us may be but leaves, whose decay no harvest sows; and yet the work of such a man does represent, does constitute an imperishable gain; it has been his opportunity and his privilege to contribute more largely than most of his fellow men to the advancement of his race, to the growth and development of humanity.

This opportunity, as is well shown by your Memorial, was largely enjoyed by our deceased brother. His life has not only covered a longer period of years, but his labors have been more diversified and have extended over a much larger portion of the world, than can be the case with most men. And he met successfully the different demands which were made upon him. Born of a distinguished ancestry, he has not fallen below the standard which was thus set before him. He has earned the respect and the affection of those who were conversant with him. It is fitting that his memory should be honored and cherished.

In compliance with the request of the Bar, your Memorial with a minute of these proceedings will be entered upon the records of the Court.

THOMAS M. STIMPSON.

At a meeting of the Essex Bar Association held November 1, 1898, Messrs. Henry P. Moulton, Alden P. White, Benjamin G. Hall and Joseph F. Hannon, were chosen a committee to prepare a memorial of Mr. Thomas M. Stimpson for presentation to the Superior Court.

Memorial.

In the Superior Court at Salem, on Friday, February 3, 1899, Mr. Justice Richardson, the presiding Judge and with him Mr. Justice Hardy on the Bench, Mr. Alden P. White for the Essex Bar Association, presented the following memorial.

May it please the Court:—On behalf of the Essex Bar, I formally announce the death of Thomas Morrill Stimpson, of Peabody, an attorney of this Court. He died suddenly at his home, on the morning of September 30th, 1898, having rounded out the three score years and ten.

The time and attention of the Court is respectfully invoked while we who knew him, unite to formal spoken offering, the rare tribute of unqualified silent eulogy.

No recollections of his earlier life can here be given. He was a generation older than the two younger men with whom he shared offices in this city for the last fifteen years. I am speaking only of the impressions of this period. They were made at close range.

The few survivors of his college class, Amherst, 1850, looking back nearly fifty years, use just such terms in regard to his youth as we should expect:—"Exceeding quiet manners," "Amiable, kindly and friendly," "Honorable, high-minded, winning universal respect," "Without a stain, subterfuge, or moral blemish." As an under-graduate he was especially proficient in mathematics. With a tendency thus induced to accurate thinking, when he directed his mind to

the study of his chosen profession he mastered and absorbed its principles. He saw the ground of their existence in reason; he comprehended the logic of their inter-relation in the complex fabric of Law.

He was fortunate, too, in pursuing his studies in the office of Nathaniel J. Lord, a leader of the Bar in his day and generation, not less able, at least, than that distinguished brother who honored this Bar upon the Bench of our highest Court.

With the comparatively rare faculties which make up a legal mind, Mr. Stimpson had a marvellously retentive memory. It was responsive not alone to questions of practical importance, but to matters of abstruse and obsolete learning. My office associate recalls how a well known scholarly antiquarian, having vainly puzzled over a very ancient writ, brought it, at the suggestion of a friend, to Mr. Stimpson, who won the lasting admiration of his visitor by straightway identifying the instrument and defining its origin and use.

His method of preparation and study was quite his own, and sometimes tried the patience of client or associate counsel. He was inclined to ignore the axiom as to the straight line. Little by-paths invited his exploration; "queries" posted along the way diverted his attention. Yet when a real emergency came, when confronted by an issue of importance as to which there was no sound precedent, his self-reliance and boldness became superb. Then, trampling down underbrush which would trouble lesser minds, he hewed for himself a path out of difficulties, straight and clear, and whosoever walked therein found safety and relief.

By far the greater part of his business concerned real estate. For many years, and to his death, he was counsel for a savings bank of high standing, represented here by its officers, and no similar institution ever had a more competent and faithful guardian. In examining titles he exercised the utmost care and thoroughness, but was not finical nor hair-splitting. He brought to bear upon his conclusions sound sense and no little of that self-reliance to which I have referred in determining whether apparent obstacles were

real or only colorable and harmless. In the construction of wills and trusts, and generally in matters which lie chiefly within the jurisdiction of the Probate Court, he was especially ready and sound. As an instance in point, a judge of a neighboring state consulted a young lawyer of this city, by mail, in regard to a title. The lawyer gave his views as to the doubtful construction of a certain will, but intimated that it was necessary to go to the Supreme Court for a decision. In response to an expressed unwillingness to incur this expense, and to a request to recommend some one whose written opinion would carry great weight, the local lawyer referred his correspondent to Mr. Stimpson. Some time after, the judge wrote that he had read Mr. Stimpson's brief over and over again, each time more impressed with the wonderful legal knowledge it contained, and he accepted his conclusions unhesitatingly.

Personally he retained the even tendencies of his youth. Not naturally robust, he was very careful of himself. He was a gentleman, every inch, courteous, kindly, honorable; in very truth without reproach.

He had many queer little individualities and ways. He seemed to live farther from the madding crowd than most of us. No less remarkable than his general knowledge was his lack of that common, every day information as to men and things which the average man absorbs by mere attrition. He was not porous to that sort of thing. He was almost the last man to know who was "being mentioned" for selectman or for Congress. Sometimes he would surprise us with sudden interest in a discovery he had newly made of matter which was to others already ancient history. But he kept well abreast and firmly in touch with the larger questions of the day, and had his own well-defined and substantiated opinions thereon. As to affairs of real importance, whether local or national, he was genuinely public-spirited. And it was not safe to assume that he was less cognizant that the Boston nine had won the champion pennant than that the Dingley bill had become the law of the land. Hav-

ing no small skill in the game, he followed the daily reports of the international chess match with assiduous care.

He gave generously of his time and wise direction both to the schools and public library of his native town. He had high ideals of citizenship and consistently observed them.

He was an enthusiastic lover of music. Talk of violins, and law was for the time abandoned. Not that he played much himself; on the one occasion when I happened to see him handle the bow, the larger part of his effort was expended in preliminary scraping and tuning. He knew quaint little places where quainter men performed delicate surgery on the rare and precious work of renowned makers. To have heard a true artist draw glorious tone from a genuine Cremona, and then to have seen at close range and perhaps have fondled the instrument, was to have been presented to royalty. For many years he was an officer of the Salem Oratorio Society, an organization of long and honorable career. In the words of a tribute recently spread upon its records: "He loved music with a keen appreciation born of a rarely fine nature, and to the study of the oratorios of the masters he brought a mind sympathetic to the genius of the composer and a soul attuned to divinest harmonies."

His vacations were illustrative of his habits and tastes. Many years ago, while away at school, I heard certain welcome visitors at the principal's house talk lovingly of a sort of happy valley isolated somewhere in the mountains, far from railroads, tourists and fashion, the lodge-room of a natural free-masonry between congenial spirits, who there, each summer, left the world behind and found pure pleasure and relaxation. I was the merest stranger to the proceedings, without password and countersign, and while my youthful impression was distinct as to the devotion, it was vague as to the location of the shrine and the personnel of the worshippers. Years after, it was a pleasure to be able to identify the valley through the discovery that Mr. Stimpson was himself a charter associate. One could not long be with him without learning of his love for Waterville, New Hampshire. Thither,

for thirty years, as regularly as August came, he went, greeting the Mad river as it rushes out of the narrow entrance, paying renewed homage to the encircling mountains. On the top of the magnificent peak of Osceola, on the occasion of his twenty-first annual ascent, he held a sort of coming-of-age reception. To this favorite retreat came many people from many callings, of high character and unaffected culture, whom it was both a pleasure and a distinct gain to know. Change and progress have made great inroads on the more primitive conditions, but there remain those who will miss the genial presence of him who has passed beyond the eternal hills.

I think he hoped sometime to go abroad. I wish that he might, at least, have wandered through the Temple and Drury Lane, that he might, on the spot, have invested the Inns of Court and Westminster and Parliament with those pictures of men and events, creative episodes in the development of English Constitution and Law, which were so indelibly imprinted on his mind. Perhaps he exaggerated the effort necessary to carry his purpose into execution, but I suspect that the ties of Waterville had much to do with the indefinite postponement.

We smiled whenever he opened the parcel containing a new report, and we knew what was coming. "I always make a practice of collating the pages," he would say, as if for the first time; "I once received a volume where certain pages were duplicated and certain others left out," and he proceeded conscientiously to discover if such an accident had happened again.

He had no clerk or assistant, and could ill have worked with one. Modern methods of dictation were untried. He tolerated the typewriting machine, but hardly took it seriously; in his heart he preferred his own careful handwriting.

His love for mathematics followed him into his early professional studies and developed into a zeal for astronomy. In later years he confessed that lenses were formerly sore allurements from law, and that he had been too much engrossed in

constructing a telescope for himself. It never occurred to me before, but I now venture to refer a seemingly superfluous exactness to the necessities of those days of zenith and parallax. Precision in time is of fundamental importance to an astronomer. If it began in this way I know not, but so long as we knew him there was a bond of fellowship between him and a certain expert watchmaker, and into the shop of the latter he was wont frequently to disappear just long enough to exchange greetings, note the variation of his excellent watch from true time, and make a diminutive note of the plus or minus on a little slip which he carried in his pocketbook, ever replaced when filled, by a new one. We never discovered that he did anything with the old slips, and it was impossible to reconcile this painstaking with certain other habits, for, be his watch never so accurate, he was alarmingly dilatory as to fixed engagements. There was no indolence about it; he simply clung too long to the involving work before him, and there inevitably followed the eleventh hour flurry of hasty departure. In saying that no man bore resentment to Mr. Stimpson, I hope that I need not except the conductors in charge of the quarter of one street car, which was his conveyance home to lunch. They seldom wholly escaped him, but in his agility in descending the office stairs and subsequent proceedings of interception there was a pro tempore waiver of dignity.

Does it seem trivial, out of keeping with this occasion and presence, to recall these mere personal traits? Ah, they entered largely into the sum total of the man, and made him as we knew and shall remember him. They were but oddities to smile at, not blemishes to hide. Thackeray said of Thomas Newcomb: "But they who laughed at the Colonel laughed very kindly; and everybody who knew him loved him; everybody, that is, who loved modesty and generosity and honor."

Defining a lawyer as one versed in the law, he had no superior at this Bar. No man among us had loftier views of professional ethics. Though he did not withhold fair criticism of the Bench, he idealized and revered the Court as the

mouthpiece of the Law. He practised thus here, in the chief shire-town of a leading county for fifty years, and yet, you, sir, for example, did not know him. It is not strange. He made no effort to be widely known. His sphere was in chambers. He appeared but seldom in the trial of a cause, and was apt to call in associate counsel. He had no arts of advocacy. He could 'only speak right on'; indeed, he failed to do quite that. In extemporaneous address that tendency to discursiveness to which I have referred obscured the main line of his thought, and a stranger, listening, would be likely to underrate his logical faculty. He would have made poor work of a side to which he could not give his whole sympathy. He could not sell and deliver his talents as merchandise, without regard to the purchaser. And so, perhaps, the sort of clients who jar one's self-respect, and who have to be taken with a little moral fumigation, seemed wholly to pass him by. Into all his contentions he could and did throw the weight of earnestness and personal conviction. Frank, clean and honest himself, when dealing with the opposite of these qualities he was capable of a righteous indignation which broke in withering denunciation and made one pity the recipient. He was at his best and strongest when employed in redressing wrong and fraud.

Again, to account for so quiet a career where there was so much ability, he seemed untouched by the commoner ambitions to which most of us are prone. He did not seek renown or office. He was utterly unconscious of the galleries. With shelves laden with precious goods, he displayed none in the show windows. His pride in well doing was infinite; he was blind to success as an abstract goal. *Nihil pro magnifico.* And the corollary of all this, restful and delightful as we look back over his closed life, is that it was not rankled by disappointment, not embittered by failure to attain glittering heights. He could easily detect veneered merit. He smiled grimly when self-assurance boosted mediocrity over the heads of such as he into the seats of the mighty; but his cynicism was mild and passing.

Then, too, his home. It was more to him than professional glory, more than all else in life. To her who was nearest and dearest he was ever devoted, tender and chivalrous. It were sacrilege to attempt to depict relations which were private and holy. A single sentence from a personal letter may be quoted without impropriety in this sympathetic presence. "Such unfailing gentleness, helpfulness and unselfishness as marked, on his part, every day and hour of our family life, I would once have thought it impossible to realize in actual experience."

How often have we, who knew him so well, marvelled at the possibilities of the career which might have befallen him if he had been just a little other than he was, if there had been less of Plato and more of Alexander. Then he might have been a leader, indeed, of this or any other Bar, and no honor in our profession would have been beyond his reach. Did some such thought occur to him? He gave no indication. The saddest words of tongue or pen seemed to have no subjective application to him.

Sitting at his own desk, in the midst of his books, I can seem to see him enter to take up the threads of his unfinished work. Here are the notes of preparation in an important case involving years of litigation and untold labor; he awaited with confidence a final rescript of success. Here are the door-cards in his familiar hand: "At the Registry," "At the Probate Court," "Back soon." Back soon? Nevermore. "At the Supreme Court." Aye, at the Court of Last Resort.

Nil nisi bonum de mortuis! How often behind fulsome eulogy lurks the reserve of charitable silence. With what regard to propriety must one often confine himself to what the deceased has done, and touch tenderly on what he has been. There is no occasion for such reserve now, here, or at any time and place, when his friends think of Mr. Stimpson. Literally he was without guile.

If, as we fondly believe, there is a place of immortal abode where absolute standards prevail, and none shall stand on other than true and naked worth, I think of him as entering

Heaven that September morning as easily as he might have opened once again his office door, and as bringing unshamed before his God the soul which he had kept white among his fellow-men.

In behalf of the Essex Bar Association I respectfully request that this memorial may be placed upon the records of the Court.

Mr. Henry P. Moulton then spoke as follows :—

May it please your Honors :—On behalf of the Bar I wish to second the motion to place upon the record of the Court the appreciative memorial that has been read, and to add a few words in memory of our late friend and brother, Mr. Stimpson. He was a man of whom no unpleasant recollections can exist. It was a pleasure to know him, and those who know him best appreciated most his courtesy, his kindness, his accomplishments and his ability. His cheerful greeting was in part an expression of his real nature. He always had a pleasant word. Upon any subject of conversation he was ready with some apt suggestion and with abundant information. He was not merely a lawyer. He was a scholar, a man of wide general knowledge, interested in events long gone by and in living issues and in the arts and scientific subjects, in the pursuit of which his interest continued unabated through life. As a lawyer he was learned, discriminating and sound. In any part of the profession in which he undertook to work his place was among the best. His investigation of difficult questions was of the most thorough and exhaustive character. His case remained with him, at least in his business hours, and he took little account of the labor and thought that he gave to it. I recall as an instance of his care the last case upon which he expended any great labor. It was a case which had been pending in the courts for years. After it had been fully tried and orally argued before a master, Mr. Stimpson submitted to the master a written argument so clear and comprehensive in every detail that it was adopted without change by counsel as the final argument in the case before the Supreme Judicial Court.

His application of the law to the facts before him was practical and accurate. He knew cases, but he knew general principles, and he assigned to a decision no more than its real value. His conclusions were firm and clear. As stated in the memorial in other language, if he hesitated at first there was no hesitation at last. His final opinion was like a well-considered and well-reasoned adjudication which seems the last word upon the question at issue.

While he was a general practitioner and not in any sense a specialist, if such a term can be applied to the practice of the law, his ability was especially conspicuous in matters of real estate and equity, departments of the law in which, as your Honors know, excellence is attained only after years of experience and thought; and in these departments very few among the lawyers of the Commonwealth could speak with the weight and authority that he could.

But it is not my purpose to present another memorial of Mr. Stimpson. This work has been done and well done; but I think there is a feeling among the Bar that no man is more worthy than he of the present action of the court and the Bar. In professional life no man among us saw farther or saw more clearly. He was faithful to every duty, and is deserving of high honor and regard in the courts in which he practiced, among his associates, and in the community in which he lived.

Mr. Joseph F. Hannan then said:—

May it please your Honors:—I desire also to second the resolutions upon the death of Thomas M. Stimpson. It is now twenty years since I became acquainted with him, an acquaintance which ripened into a strong friendship, lasting until his death. My experience in that respect was a common one with the people among whom he lived and practised his profession. He was a man of deep learning, of a refined and gentle nature, of courteous manner and pleasant speech, with a well balanced and diciplined mind and a high appreciation of the true dignity of manhood and of the profession

which he honored by his life. He was also a man of sturdy character. He was truthful and never evasive. As a citizen he was most highly respected. Of his great services for more than a generation in the school board of his native town, others may speak. His love of music, his studies in astronomy, his pleasure in the fine arts, his fondness for the forests and the mountains, and, above all, his honorable and stainless life, marked him a gentleman.

In the practice of his profession he was conscientious and painstaking, never avoiding any labor, however exhausting, that might benefit his client or his cause, and bringing to his work a store of legal lore methodically and systematically arranged, always ready at his call, which was possessed by but few members of the Bar. His place in the profession was a high one and a model for the younger practitioner. He was of the old school. He enjoyed his work and he enjoyed his life. He was in perfect control of all his faculties until the very end, and the professional work which he finished just before his death was a model of its kind.

In certain lines of the law, at the Essex Bar, he had few equals and no superiors. In the lines in which he was most often engaged, in the Probate Court and in the Registry of Deeds, no lawyer at the Bar was ever consulted more by his associates than he, and his long experience and valuable advice were always kindly given, in his own modest and charming way. We who were associated with him there, almost daily, for the past twenty years, shall long miss him. His cheerful and sunny presence has passed away with the allotted span of human life, but his memory will remain forever green.

Mr. William H. Niles then said :—

If your Honors please :—I desire to support the motion that my brother has made. The death of brother Stimpson leaves a vacancy in the Essex Bar that I believe no member of it can fill. His personality was unique. His manners, his methods, were all peculiarly his own. He was always

dignified, affable, fair-minded and kind. Much has been said in his praise, here and elsewhere, and much more might be said, and still it may all, or nearly all, be reduced to a few words. He was a close student, a ripe scholar, a careful, prudent, painstaking adviser. He was warm hearted. He was a fine companion. He was high-minded, strictly honest and correct in his professional conduct, and, above all, a man of spotless reputation, and unquestionably honest in his professional, as well as in his private life. In all the years that I knew him I do not remember ever to have heard an insinuation against his honesty, his integrity or his fidelity. He gave the oath which he took as an attorney-at-law, its full meaning. He did no falsehood nor consented to any in court; he did not wittingly or wilfully prosecute any groundless or unlawful suit nor give aid nor consent to the same, but he conducted himself in the office of an attorney to the best of his ability and with all good fidelity as well to the court as to his client. All will agree that brother Stimpson was a most modest man. He was pure and sincere. He never sought to be brilliant nor to push himself to the front, but in speech he was always intense, fervent and impressive. He thoroughly believed in every claim he made and in every point he raised, and no one could listen to him without being impressed by the depth of his sincerity and the firmness of his belief in whatever matter he presented. Instinctively he was a gentleman, and he was a superior gentleman. No one except those who knew him, will appreciate the full meaning of these words. If his temper was ever ruffled, though as has been said here, he was emphatic and positive and sometimes severe in his denunciation of what he believed to be wrong, yet he was always fair and candid, and his opponent would always feel, thoroughly feel, that this was so. He was an attentive and patient listener. He was always considerate and tolerant toward his opponent. He was refined in his language and in his deportment. He was always refined, always gentlemanly. He was bright and cheerful at all times whenever I have seen him, under all circumstances, and there was an

atmosphere that seemed to surround him which made it always pleasant to meet him, and always pleasant to think of him when absent from him. It is easy to speak of such a man as this, and to honor his name, and I am glad to have the privilege of standing here and expressing as I do, my profound respect for his memory.

JUDGE RICHARDSON responding, said :—

GENTLEMEN OF THE ESSEX BAR :—The court receives your tribute to the character and life of your late brother Thomas M. Stimpson, with due appreciation of the feelings which have prompted it, and of your desire to express and record them here. I was not personally acquainted with him. His professional work was, I think, chiefly in this county, and during the last twenty-five years or more of his life, he was not, as I am informed, much in court. But it clearly appears that during this period, as before, he was actively employed in the work and practice of his profession, probably in as useful a way, contributing as much to the common welfare, and on the whole, being as useful to his day and generation, as if he had occupied more public or conspicuous positions.

The work of lawyers has undergone a great change since he was admitted to the bar forty-five years ago. At that time the one measure of a lawyer's ability and standing was his success in getting verdicts. It is reported that Mr. Webster defined a great lawyer, as the lawyer who won his cases. The ability to win verdicts is still regarded as proof of great skill, a high accomplishment, and an object of a laudable ambition ; but other fields of useful professional labor have been opened ; the invention and increase of corporations, trusts and syndicates, the extension of the power of municipalities, the increase of property held under testamentary trusts, the extension of the rights of married women, the size and complexity of commercial transactions, and the changes which have taken place in business methods generally,—much of it regulated by legal enactments,—have opened to the profession new fields for the legitimate practice of law, which is done chiefly

in the office,—but which requires as much learning and capacity, as high legal attainments, and as good judgment, as does the successful trial of cases. And it was here, in office work as I understand, that Mr. Stimpson labored with the marked success which you have described. He so did it, as to gain the respect and honor of his associates, and the confidence of the community. I have been told within a few days by one who knew him well, that probably in most of the difficult questions concerning titles to real estate, and trusts under wills, which have arisen in this county during the last quarter of a century, his opinion and advice were sought. He knew the law on these subjects, and he gave his honest opinions.

Forty-five years in the practice of law! What a fund of interesting knowledge of all kinds he must have acquired! what family confidences! what a treasure of interesting personal reminiscences of the great men whom he met and knew at this Bar, he must have had! And then during that period what feuds and contensions he has allayed, what suits averted, what reconciliations brought about, how much useless litigation saved! I cannot conceive a place or field, where a man of the proper qualifications, and of the right spirit and temper, and having the confidence of the community, can render more or better service to his fellowmen than in a field and practice like that. Some other professions and callings occasionally bring men into close relations; the physician has many family secrets, the minister has parish confidences, but no other calling or profession brings men into so close a touch, or so intimate and sympathetic relations, as the profession of law. When his client's honor, or his life, or liberty, or property, or anything which he values in life, is assailed or threatened, to whom does he go! to whom so unreservedly lay open his heart, and so fully expose his troubles and burdens, whatever they may be, as to his lawyer?

It is the fashion in some places, to charge the profession with selfishness—and it may be, probably is, true—that few lawyers make, or can make, an exhibition of charity in the shape of testamentary bequests. Few of them leave large

estates, and they may not care, with money laboriously earned, to leave it to the chance of its being preverted and used

"To endow a college *or* a cat."

But there is much genuine charity besides bequests or gifts of money. What good lawyer of ten years' practice has not often given his time, his advice and services, to the extent of trials in court, to poor persons from whom he had no expectations of compensation! and when the welfare of his neighborhood or town is in any way in jeopardy, or when a proposed public improvement is to be promoted, who, as much as the lawyer of the neighborhood or town, is expected to gratuitiously contribute his time and talents to it? Lawyers, more than any other men, give direction to public affairs; they are an essential and conspicuous part of the machinery of administering the law; and the respect in which the law itself is held, depends much upon the character of the Bar.

The competition for prizes in the legal profession, as for the desirable things in other callings, is sharp and severe, and in the struggle some must fail; but in this, as in other pursuits, if the condition must be this competition though severe and hard, provided only that it is free, that labor and the rights and privileges of it, are open equally and alike to all, with individual freedom and a secure tenure to what may be fairly acquired, what man would not prefer it to the monotonous, uninteresting condition of existence, where the individual is lost sight of in the mass, as represented in the pictures painted by the advocates of the New Social Order?

In the latter condition there might be less inequality and strife, but it would be more like the peace of the desert.

"Better fifty years of Europe, than a cycle of Cathay."

Your late friend evidently was individual and lived his own life; *quaint* perhaps as you say, but probably so much the better, at least so much the more interesting; and living his own life it was more likely to be a true life; true to himself, and so, could not "be false to any man." And is not the secret of our prosperity to be found in the freedom and energy of *individual* life? Must not successful schemes for improv-

ing society begin by improving the *individual?*—The Legislature may make conditions favorable for this improvement, but legislative enactments do not make men wise, virtuous or strong, especially by things which diminish their individual freedom, or their sense of responsibility and self-reliance. And, at the best—

> "How small, of all that human hearts endure,
> The part, which laws or Kings can cause or cure?
> Still to ourselves in every place consigned,
> Our own felicity we make or find."

During the present session of the Court, I have constantly heard allusions to Mr. Stimpson's fine sense of honor, tributes to his integrity, and his honesty; no other proof of these is needed, than that furnished by your address, bearing the testimony of those who knew him, as you say, "at close range."

I have once or twice heard him referred to as rather "old fashioned" and "conservative,"—a charge not infrequently made against members of our profession, especially against those of us whose sun has passed its meridian, and whose faces are turned towards its setting; but if it refers to those who still respect the institutions of our fathers, who still think that there may be some wisdom and lessons of value found in the experience of the past, who are not quite ready to abandon all old principles, faiths, usages and practices, for the new-fangled and untried theories, isms and schemes of the hour; if the charge includes these, they will have, at least, the consolation of being found in much good company.

The failure of your deceased associate to appreciate the value of "the axiom as to a straight line," to which you have alluded, was probably from a practical point of view, an obstacle in his way. In certain military operations, in metaphysics and in oriental diplomacy, progress is supposed to be best made by obscureness and indirection; but the law—in its administration—is a very practical science, and is best dealt with in a direct, plain and simple manner.

Mr. Stimpson, as you have said, was interested in things other than those within the strict line of his profession. He was twenty-five years a member of the Library and Lyceum Committee of Peabody Institute; and being a student, promoted in many ways, though by his own methods, the cause of education. He took an active, though unostentatious, part in the events and things around him, where he felt he could promote the interests of the community in which his lot had been cast. He had the wit to see—and the wisdom to act upon it—that it was better to do the things which he could do well, than to attempt those which he might be able to do only indifferently.

In view of his liberal education, his retentive memory which you have mentioned, of his courtly, though agreeable manners, and his knowledge of the law, it might have been expected that he would seek the distinction—in his day *the* distinction—of a lawyer, success in the trial of causes; but you say "he had no arts of advocacy." He had not learned—

> "How to engage his modest tongue,
> In suits of private gain, though public wrong,
> Nor hunted honor, which yet hunted him."

Possibly—but this is a mere conjecture,—he may have lost courage, as many others have done—by a wrong verdict or judgment in his first case. But let no young lawyer be discouraged, or cast done by that; let him understand and remember that "the race is not always to the swift, nor the battle to the strong, but time and chance happeneth to them all."

Many work on the temple of Justice, some in more conspicuous places than others, but he whose labor—honestly and faithfully performed—contributes to the strength of the foundation, though unseen and invisible, adds as much to the usefulness and value of the edifice, as he who labors more conspicuously on the lofty dome. The work of both is necessary, and both are entitled to our gratitude and respect.

In accordance with your request, it is ordered that the memorial, with a memorandum of these proceedings, be entered upon the records of this court.

BENJAMIN F. BRICKETT.

At a meeting of the Essex Bar Association held April 26, 1897, Messrs. William H. Moody, Henry F. Hurlburt, Alden P. White, Charles A. DeCourcey and Edward B. George were appointed a committee to prepare a memorial of BENJAMIN F. BRICKETT to be presented to the court.

MEMORIAL.

In the Superior Court at Lawrence, held on Friday, Oct. 27, 1899, JUSTICE CHARLES U. BELL on the Bench, MR. WILLIAM H. MOODY read the following memorial:—

MAY IT PLEASE YOUR HONOR:—The brethren of the Bar ask that you cease for a time the performance of the daily duty and join with them in commemoration of their dead. To the dead themselves this pause in our activities and the words with which we shall clothe our thoughts are nothing. To us who survive they are much. The blessed healing of death has touched them; they are at rest forever, and little care what we say or think of them. But to us words come as a relief to sorrow, perhaps as an expiation for the things which friendship left undone in life, and having spoken them we may return to our endless strivings with softened hearts. I am commissioned to pay the formal tribute of the Bar to one who was of the best known and most beloved among our number. The months which have passed, though they have clothed his grave thick with nature's garments, have not brought forgetfulness to us, nor healed our grief for his untimely death.

BENJAMIN FRANKLIN BRICKETT was born in Haverhill in this county on April 10th, 1846, and having lived his life in that town and city, died there on April 19th, 1897, fifty-one years of age.

He came on both sides of honorable ancestry, for generations active in the community in which they and he dwelt. One

of his paternal ancestors, James Brickett, was a general in the Continental army in the war of independence. His father Franklin Brickett, for some time a prominent shoe manufacturer, was a keen, farsighted man who had much to do with the conversion of the quiet town of Haverhill into a thriving city. His mother who survives him, Mehitable Dow (Bradley) Brickett, was the daughter of Captain Brickett Bradley of the West Parish of Haverhill.

The father's means easily enabled the son to obtain a liberal education. After passing through the public schools in Haverhill he finished his preparation for college at Phillips Academy in Exeter. After a short stay at Bowdoin he entered Dartmouth College and graduated there in the class of 1867. The first year after his graduation he studied in the office of Daniel Saunders at Lawrence. The next year he studied at the Harvard Law School. On April 19th, 1869, he was admitted to the Suffolk Bar. He did not at once begin practice, but taught school at Glendale, Ohio, for two years, and in 1872 opened an office in Haverhill.

In those days the path of the beginner in the profession was less thorny than it became later and is now. With his ready wit, handsome face and figure and genial presence, he obtained from the first a business which was profitable, and with the necessary interruptions of official duties continued so to the end. He was married in 1889 to Emma Jannie Gubtill who survives him. Mr. Brickett adherred to the Democratic party in politics, although he had nothing of bitter partisanship in his nature. He was Chairman of the City Committee of that party from 1882 to 1886 and 1889 to 1892 inclusive, and was a delegate to the Democratic National Convention in 1892. He served upon the School Committee from 1876 to 1882 and was the City Solicitor of Haverhill three years, 1883, '84, and '85. He was elected to the Massachusetts Senate for the year 1891 and served in that body on the Committee on the Judiciary, and as Chairman of the Committee on Probate and Chancery. In the latter capacity, it was his fortune to draw and support with success the im-

portant law which taxes collateral inheritances. He was elected Mayor of Haverhill for the year 1896 and reelected for the year 1897 in which he died, although at the time of both elections the Republican voters were in a large majority in the city.

In all the offices he held he conducted himself with dignity and ability and to the acceptance of his constituency. Especially in the chief magistracy of his native city he seemed to broaden under responsibility and bade fair to make the remainder of his life one of largely increased usefulness.

Yet all the time his first thought was for his profession. Mr. Brickett was a successful lawyer, so successful that he needs no overstrained eulogy, so successful that it is worth the while to study the reasons for it. His field was in the court room and not in the office, except in preparation there for the court room. He made no pretensions of great book learning, and, when the case demanded that, associated with himself some one who would bring to the contest qualities which he thought he lacked. In the Court room he was formidable indeed as we all well know. No one of us felt sure of winning a cause when Brickett was on the other side with the jury to judge between us. I doubt if he ever lost a verdict which he ought to have gained and he sometimes won one that some of us thought that he ought to have lost. There were several causes for his great success as a jury lawyer. His presence was impressive. People seeing him for the first time inquired who he was, and having learned never forgot him. So he obtained a large acquaintance with men who would be likely to be found in the jury box, and acquaintance counted something for him, for by his easy good nature most men who knew him at all, knew him by his first name, an advantage not to be despised. Thus in the trial of the cause he was more than the advocate presenting the reason or logic of the issue, he was a personage, to be reckoned with as much as with an important piece of evidence. He never really lost his temper. If there was any righteous indignation with the opposing party or counsel or an adverse witness

advisable, it was forthcoming in adequate quantity, but it never clouded his vision nor disturbed his keen judgment. He had an inexhaustible fund of humor and a broad wit never over the head of any member of the panel. There was rarely a case in which he was concerned where there was not an illustration of this quality. Many instances of it were present in my mind as in the minds of all his brethren but I resist the temptation to relate them here. The kindness men feel to those who amuse and interest them he aroused in the breasts of the jury and took full advantage of it. Thus it always happened that he made an interesting speech at the close of a case. The jury listened to him and having gained their attention and good will, he availed himself of it to urge forcibly and fairly the strong aspects of his side of the case. Here he was aided by one quality in which I think he excelled every member of our Bar. He had an unfailing instinct for the things which would be likely to be considered as important by the tribunal which he was trying to convince. He understood better than any one of us what the average jury man would think and how he would reason. Sometimes he might seem to us to slight the important and magnify the trivial features of his case but he generally proved to be right His sense of jury perspective, so to speak, was exquisite and it was a mighty power. His sympathies were broad and deep. To them his own heart quickly responded and by eloquent speech he readily communicated them to his hearer. Finally, and here I may surprise some of our brethren, who knew him less well than I did, he had an unfailing industry. He somewhat affected carelessness and indolence, but if any one of us took him at his word and fancied that he came into Court with any nook or corner of his case unexplored, we found ample reason to regret it. It was by these qualities which I have imperfectly portrayed, that he became the strong man and a leader among us.

But it would not content the Bar if there were left upon its records only the bare outlines of our brother's biography and speculations concerning the causes of his undoubted

power as a lawyer. It is as a man and a comrade that we shall remember him the best. He had no enemies among his brethren. He was everybody's friend. Who can ever forget those annual social gatherings of the Bar at which he reigned supreme? The kindness, good humor, and the wit which never left a sting, which was his, he brought to our board in abundance. Each year we looked forward to those events with pleasant anticipation and back to them with pleasant memories. The youngest was made to be at ease and the oldest to renew his youth for the night and the judges to unbend from their dignity. To those who have known him there, these gatherings can never be the same again. And as it was there with him so was it everywhere through life. There seemed to be written upon his face the spirit of the Latin motto so often carved upon the Old English sun dials "*Horas non numero nisi serenas*"—"I count no hours save those of sunshine."

We who see so many younger faces about us and seem almost to have come to be of the seniors of the Bar have many precious memories of those who have departed. With sorrow we add this last to our store, and count it not the least.

I would respectfully request that this memorial be entered in the records of the Court.

Mr. W. Scott Peters then said:—

May it please your Honor:—It seems proper to me at this time to express my opinion of our departed friend and brother, the late Benjamin F. Brickett, and to remind the members of the bar of the great loss they have sustained by his death. I had the honor and great pleasure when beginning the study of law to have been a student in the office of the firm of which he was a member and during the brief space of time which I now feel justified in appropriating to myself, it will be inconsiderate on my part if I do not, at least, make an attempt to pay tribute to some of the many good and sterling qualities of which our friend was unquestionably possessed. As a man he was genial and pleasant to

meet and associate with, always willing to assist a friend and most charitably inclined towards the unfortunate. He was generous almost to a fault and naturally of a sympathetic disposition. His good nature and great kindness was particularly manifest in his relations with the younger members of the bar who were wanting in experience, who needed the kindly advice which he was able and willing to give.

As an advocate he was second to none in the county in the presenting of causes to a jury, and thoroughly understanding human nature, he always tried his cases with a great deal of tact.

At the time of his death, by reason of his great experience and wide range of knowledge coupled with his great ambition to make life worth living, he certainly gave great promise of being one of the most useful and honored citizens of his native city.

I would respectfully second the request that the memorial be entered upon the records of the Court.

Mr. Newton P. Frye said :—

May it please the Court :—These occasions are sad, yet interesting. Sad because of grief for departed friends, and interesting because eulogies wisely spoken illustrate the lives and characteristics of these friends, and I cannot let this occasion go by without adding my tribute to the memory of these departed brethren.

I knew my brother Brickett well for very many years. I knew him better perhaps professionally than socially, yet it was impossible to see much of him at any time or any where, without knowing him both as a lawyer and as a man. What a genial fellow he was, always and all the time. Always good natured and always happy. My first acquaintance with him began long ago, several years before I was admitted to the Bar, and was happily continued up to the time of his decease. It was in his early days of practice and at a criminal term of the Superior Court held in Newburyport, with Judge Rockwell on the bench, when he tried several cases for the

defendant before the jury of which I was then a member. I well remember how quickly he became acquainted with each juror on the panel,—he very soon knew us all individually, and none of us ever thought of calling him Mr. Brickett—it was always "Ben." And he met us so generously and heartily and in a good natured way, that we as jurors, never felt that awe in his presence that was manifest in the presence of some others of the then active lawyers.

His appearance before the jury was winsome. He was thorough in his analysis of the evidence, and clear and plain spoken in his arguments, and although during that term he won no acquittals, it was the fault of the cases rather than of the advocate. But then we all remember that during the administration of Hon. E. J. Sherman as District Attorney, it was the exception for the government to lose a case, there being only one acquittal during that sitting of the Court.

But Bro. Brickett was a good lawyer, and in his career as a practitioner, won many verdicts from the juries of this County, and even in the face of able opponents and strong facts. He was strong in many ways. Possessing a genial nature, and generous to a fault, he walked through life pleasantly, and added joy to the lives of all who had occasion to meet him,—but he did more than this, he aided others; many times he made suggestions to me in matters of law and practice which I always felt grateful for, and not to me alone, for it was his habit to be helpful to all. I deeply deplore his untimely end. As to my friend Judge Carter.* What a grand man he was. I knew him well and his greeting was always cordial. But I always seemed small in his presence. He seemed great to me. Always sensible, always wise, always ready. He not only knew the law, but well knew how to explain and apply it, and was strong before a jury. I know he was content to be a Police Court Judge, but his ability and learning was amply sufficient to place him on the

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The memorial of Brickett and Carter were read the same day.

bench of a higher court, and had he been so placed would have adorned the place and position. In many ways he was a great man, and it seems a pity that the inexorable law of nature must bring old age to such. But if this life is but preparatory to a higher and grander life to come, who knows but this brother's characteristics will shine with an unwonted brilliancy in that better life which knows no old age and no infirmity.

Such is my faith and hope, and although one of these brethren was cut off in his prime, and the other faded away in the infirmities of age, yet their lives were for a purpose, and are lessons for us all.

HENRY CARTER.

At a meeting of the Essex Bar Association held June 15, 1898, Messrs. Boyd B. Jones, William H. Niles and John P. Sweeney were appointed a committee to prepare a memorial of HENRY CARTER, to be presented to the Court.

MEMORIAL.

In the Superior Court held at Lawrence on Friday, October 27, 1899, JUSTICE BELL on the bench, MR. BOYD B. JONES read the following memorial :—

MAY IT PLEASE YOUR HONOR :—In 1898 there was laid in his final resting place one who had finished the journey of life in his eighty-fourth year, and who had so conducted himself that he deserved and enjoyed the respect, the admiration and the affection of those who knew him.

The life of JUDGE HENRY CARTER had been a long and not uneventful one. He was born in Bridgton, in the State of Maine on the twenty-second day of September, 1814, and died at his home in that part of Haverhill known as Bradford, on the twenty-fourth day of January, 1898.

In an extended and varied career he had discharged many and important responsibilities with a capacity that was always adequate and a courage that never wavered. A striking personality and talents of a high order made him a prominent figure on any occasion and in any company. Ready in speech, sagacious in counsel and able in action, he impressed the observers as a man earnest in the performance of his duty, capable, modest and self-reliant, while his intellectual endowments were such that neither in legislative debate nor in the more strenuous contests at the Bar, no matter who his antagonist, was he ever overmatched.

It is a pleasing duty, may it please your Honors, for Bench and Bar to unite in a tribute to one whose life furnishes to each a noble inspiration.

Judge Carter was the worthy product of a generation which antedated the Declaration of Independence, and which successfully encountered the perils and privations of that stern period. Mentally and physically he inherited its force and strength. His father, John Carter, was a country trader and was a man of affairs in the conditions which surrounded him: he died when his son was ten years old. His mother was a member of the distinguished Hamlin family. She died when he was two years old.

At the age of sixteen years young Carter was fitting for college at an academy in Bridgton when his uncle informed him that his means were exhausted and that he could no longer pursue his studies. Then the lad exhibited the courage and self reliance which characterized him throughout his life. Without consulting anyone he walked a distance of forty miles to Portland and secured employment as a printer in the office of the Advertiser. After working a year or so in that office and on the Jeffersonian, a paper published by his relative Hannibal Hamlin, he studied law for a year, teaching school in the winter. He then passed two years as a cadet at West Point. He then resigned his cadetship and, his ability as a writer having attracted attention, he accepted a position on the Kennebec Journal in Augusta, Me., which he held two years, studying law evenings. The law was his chosen profession and the object which even as a mere boy he kept steadily in view.

In 1836, being less than twenty-two years of age, he was admitted to the Bar at Augusta. This was at a time when a student was not permitted to take an examination, unless he had been in college two years and studied law three years.

He was married the year he was admitted to practice, and five years later Governor Kent appointed him prosecuting attorney for Cumberland County. At that time such men as the Fessendens, father and son practised at that Bar and appeared for defendants in criminal cases.

At the very outset of his official career his abilities were tested by the trial of an indictment for arson, in which the

defendants were men of respectability and were defended by the best legal talent. The young attorney not only tried the case successfully but impressed the Bar and community as being the peer of his antagonists. The criticisms to which his youthfulness had subjected his appointment were silenced by this proof of his qualifications.

We, who, in later years, have observed and felt his capacity, force and perseverance, do not wonder that the penniless lad of sixteen years, in ten years' time, fitted himself for, and gained that responsible and honorable legal position, which men of years and prominence were eager to secure. He held the office as long as the Whig party remained in power.

In 1847, he gave up the successful practice of a profession in which he delighted and at which he had achieved distinction and honor, and moving to Portland, became part owner and editor in charge of the Portland Advertiser on which as a lad he worked as printer. This change was but the strong expression of the earnest, forceful character of the man.

The Wilmot proviso prohibiting slavery in any territory that might be acquired from Mexico, had been moved in 1846. Judge Carter was an ardent, uncompromising enemy to slavery and had become recognized as one of the leading men in the Whig party. That party was opposed to the extension of slavery, but it included many who were opposed to its existence and were eager to kill it. Judge Carter was one of the latter. To these men slavery was the sin abominable and he who fought it not was a guilty participant. And they writhed over the nation's sin as a godly man over the depravity of his son. With them it was principle and policy, purpose and not expediency. If their hearts were hot, their minds were clear and their wills determined. The extinction of slavery was what they purposed and accomplished.

In the ten years following, the Portland Advertiser was Judge Carter, and he was a power in the State of Maine. He fought for a union of the Prohibitionists, Free Soilers and Whigs; he succeeded in uniting the latter two. Little have the friends of his later years known of the important part he took in a great national struggle.

In June, 1854, in that paper which he edited and controlled, appeared the first suggestion that the Whig party should declare for a union of liberty-loving men under the name of the Republican party. The Whig party in Maine refused to act upon the suggestion; but in that year the Free Soilers of Massachusetts and Michigan, acting upon it, organized in each state under the name of the Republican party, and the Legislature of Maine elected as a Republican governor, Anson P. Morrill the nominee of a mass convention, supported by men who entertained the principles of the Republican party.

In 1855, Judge Carter formally renounced his allegiance to the Whig party, and the Advertiser as a Republican paper advocated the re-election of Morrill as a Republican, and the latter, receiving a plurality but not a majority of the popular vote, was elected by the Legislature.

In 1856, Judge Carter was a delegate at large from the State of Maine to the First National Convention of the Republican party, and served on the Committee on Resolutions; a striking proof of the manner in which he was regarded by the great men of that great state.

In 1857, at the age of forty-three, having assisted in the organization of the National Republican party, in the declaration of the principles on which it appealed to the country, and in its success in his own state, he felt at liberty to consult his personal interests and to resume the practice of his chosen profession.

Even if his life had terminated at this early age, it could have been truly said that his works were ample and his career remarkable. But forty-one years of usefulness and honor yet remained.

The commercial activity of Massachusetts opening a broader field for legal talent, Judge Carter removed to Bradford, Mass., in 1857, and was then admitted to the Bar of Essex County. He at once took high rank and stood in equal fight with such men (and there were few like them) as Stephen B. Ives and Elbridge T. Burley. He was well versed in the

principles of the common law; prepared his cases very thoroughly, and was a close observer of human nature. He had a logical mind and a power of expression which, united with an impressive, earnest manner, made him a very formidable antagonist. He had a keen sense of the ridiculous and was a master of sarcasm. While he was a very successful jury lawyer, he was equally strong in the presentation of law in the Court, and always received its respectful attention. In the closing argument he was almost irresistible.

But it is as a Judge that Henry Carter endeared himself to the members of the Haverhill Bar. We knew that he was a very strong and able lawyer and amply competent to manage and conduct the most difficult cases. We knew that his judicial qualifications were great and that he was well equipped to occupy a seat on either bench in this state and to decide the most important causes. And yet we felt that as Justice of the Police Court of Haverhill, he heard and decided the cases which we tried before him with as much consideration and patience as if counsel and causes were the most important in the land.

His judgments were formed quickly, but they were deliberate and usually correct. His decisions were rarely appealed from and still more rarely reversed. The members of the Haverhill Bar will ever value the benefits which they derived from practice in his Court.

Judge Carter was appointed Justice of the Haverhill Police Court in 1867, and occupied that most important relation to the community until the day of his death. He judged wisely and well and the people respected his decisions. He was eminently judicial. While he was a great believer in the public schools, he did not hesitate to uphold the legality of the parochial schools when, in his view, the interpretation of the Statute required it.

While he was a bitter enemy to the liquor traffic he did not hesitate in advance of the decision of the Supreme Judicial Court, to hold that "a sale of cider by the maker thereof, through a servant or person hired for the purpose, is

within the exemption of the Public Statutes, chapter 100, section 1, although the maker has the cider made at a neighboring cider mill and does not himself raise all the apples from which it was made." Other cases with which the Bar is familiar made him known throughout the State.

His boys, as he delighted to call us, loved him well. He was our friend; he greeted us when we were well; he visited us when we were ill; he sympathized with us in our failures and rejoiced with us in our successes.

Age dealt gently with him to the very last, the stalwart form became a little more bowed; the hearing was a trifle dulled; but the faculties were not dimmed; the interest in life was not abated; and the mind was not clouded. He knew that there was an organic trouble with his heart and that the end was not far. A well spent life and a conviction that the Almighty created man for a beneficent purpose sustained him. Following the lines of the poet, it may be said—

> "He sank to the grave with unperceived decay
> While resignation gently shaped the way."

Never again shall we see that rugged and expressive countenance, so serene in controversy, so judicial in deliberation and so kindly in friendly intercourse, but never shall we forget it, and in order that others may in some degree know and appreciate his life and character, I ask that this imperfect memorial may be extended on the records of the Court.

Mr. Andrew C. Stone then addressed the Court as follows:—

May it please your Honor:—When I came to the Essex Bar in 1867, Judge Carter was one of the conspicuous members of this Bar.

There always have been, are now, and always will be leading members of every Bar, men who are conspicuous in their leadership. Of this little coterie of which I speak, all have passed on save Brother Northend of Salem and our own venerable Brother Daniel Saunders.

Judge Carter was not that keen, quick, sharp and far-

sighted lawyer as was Mr. Ives. He did not have the polished manners of Wm. C. Endicott, nor the profound learning of Judge Perkins or Mr. Perry, yet he might well be called a great lawyer.

He did not try a great many cases, but I think he was at his best before a jury. I always suspected that he depended largely for the law in his cases upon his partner, Mr. Jeremiah P. Jones, than whom there was no better lawyer in Essex County. His facts were well prepared and were always marshalled with great tact and ability. That honest, rugged face of his which carried in all its lines the deep impress of truth, his humor and his pathos, both equally effective, his extensive knowledge of human nature, his earnestness and his fidelity, all had a great effect upon any jury before whom he appeared.

I do not know how it strikes the young men of to-day, I do not know how it struck the young men of my time when I came to the Bar, but I always had a deep veneration for these men who had pushed themselves forward into the front rank of our noble profession. I looked at them through my young and inexperienced eyes with an awe and veneration which almost amounted to worship.

My acquaintance with Judge Carter in the years which followed my admission was that which ordinarily occurs between an old and young lawyer, yet I remember well his kindly greetings and pleasant ways. Some years after, when I came to hold a similar position in Lawrence to the one he was holding in Haverhill, my acquaintance ripened into a sincere friendship. I saw him often from that time to the date of his death, and always sat at his feet and learned of him as he discussed the duties of his official position. I think it would be readily acknowledged that no better magistrate sat upon the bench of the inferior courts of the Commonwealth than Judge Carter.

I have spoken these few words of him as a lawyer. Judge Carter was more than a lawyer, more than a magistrate. He was a representative citizen of the Commonwealth, in the

best sense of that word, true in all his relations with his fellow men, patriotic and public spirited, honest and generous, plain spoken but not dogmatic, his advice was eagerly sought upon all sorts of questions which daily arise in a busy community.

Types of men in our Commonwealth are not nearly as distinctive as they used to be. Our population is becoming so heterogeneous that the lines which divided men into types are fast becoming obliterated. Judge Carter was a member par excellence of that distinctive type of men known as New England yankees. I use that word not in a facetious or disrespectful sense but as marking a class of men whose ancestors were of New England birth, and who have succeeded to all the traditions and inspirations which have come down from the Puritan and Pilgrim.

Rugged and honest, truthful and just, possessed of a spirit of patriotism and love of our institutions, brave but unassuming, of keen intellect and ready wit; such, in a word, is my estimate, both as a lawyer and a citizen, of our dear friend who has gone.

May the Bar of Essex County never fail to have among its leading members men of the stamp of Henry Carter.

I respectfully second the request that the memorials be entered upon the records of the Court.

Messrs. William L. Thompson and Mr. Ira A. Abbott made brief addresses and Justice Bell made an appropriate response to both memorials and ordered that both be spread on the records of the Court.

THEODORE M. OSBORNE.

At a meeting of the Essex Bar Association, held June 12, 1899, Messrs. Daniel N. Crowley, William D. Northend, William H. Moody, Harvey N. Shepard, and Charles S. Saunders of Lawrence, were appointed a committee to prepare a memorial of THEODORE M. OSBORNE, to be presented to the Superior Court.

MEMORIAL.

In the Superior Court, held at Lawrence, on Wednesday, March 7, 1900, MR. JUSTICE BISHOP presiding, the following memorial prepared by MR. DANIEL N. CROWLEY, for the Essex Bar Association, was read:—

THEODORE MOODY OSBORNE, a member of the Essex Bar, died in Boston, on the sixth day of February, 1899.

Mr. Osborne was held in so high an esteem by his brethren at the bar, and had gained in his profession such a creditable reputation for scholarly attainments and thorough knowledge, that it is but proper that the regular business of the Court in this county should be for a short time suspended that some tribute might be paid to his worth.

He was born in that part of old Danvers which is now Peabody, on the twenty-fifth day of November, 1849, the son of George Abbott Osborne and Hannah Sawyer Moody, his wife, and there the greater part of his life was spent. He fitted for college in the public schools of his native town, and graduated from Harvard in the class of '71. Leaving Harvard, he studied engineering at the Massachusetts Institute of Technology, and after graduating there he followed the profession of an engineer in Nebraska, assisting in locating some of the main lines of railroad through that state. After about two years in this occupation, he returned to Massachusetts, and was elected librarian of the Peabody Library in Peabody, and remained in charge of the library

from 1873 to 1880. During this time he studied law and prepared himself by general reading and study for the profession to which he was to give so much credit.

He prepared for the bar in the office and under the direction of Hon. William D. Northend, of Salem, and was admitted to practice at the December term of the Superior Court for this county, in 1879, and thereupon opened an office in Salem, and remained there in general practice until the establishment of the equity session of this Court for the county of Suffolk, in 1888, when, on the recommendation of the late Chief Justice Brigham, he became clerk of this division of the court.

Here, at least, it needs not to be said that this position called for a knowledge of law not only peculiar and technical, but rare among good lawyers. Yet, from the outset, Mr. Osborne displayed such a ready knowledge of the practice, the principles and the history of equity and the courts of equity, that the fitness of the appointment was not only recognized, but gratefully appreciated by both the bench and the bar. He had a love for the study of equity and equity pleadings, and no question was so complex as to deter him from its careful consideration, but on the contrary, it may be said of him that the more delicate and involved the question the more readily and earnestly he approached it, and having undertaken its study it was not abandoned until all its phases had been carefully considered, and a conclusion adopted, and so adopted that it was well fortified by precedent and principle.

In his early years as a lawyer his thoroughness of study was recognized by so eminent a jurist as Justice Otis P. Lord, then a member of the Supreme Judicial Court of this state, who complimented Mr. Osborne by availing himself of his services in the preparation of his work. To the older justices of this court any word of mine would be superfluous in speaking of him as a lawyer or of his worth as a clerk in equity. He was recognized by them all as an authority and they were ever ready to acknowledge his faithful and valuable assistance in the performance of their duties.

I hesitate, therefore, to speak of our late brother as a lawyer and I purposely refrain from assigning to him his proper rank in our profession. To attempt to do so would display a conceit on my part altogether unwarranted. I confine myself, therefore, to his reputation among the justices and the eminent lawyers of his day, and I think I can say without injustice to any of his brethren that the brightest of them readily acknowledged that few lawyers of his time had a better knowledge of the rudiments and history of the law and none were more learned in the history and principles of the courts of equity and of equity pleading.

Brother Osborne was in all things thorough. Whatever he did or undertook to do was undertaken with the purpose to apply to that work all his faculties and information and to adhere to it until his task was done.

He was not a bookworm in the sense of constantly and aimlessly poring over books, but he was a man whose time was largely given to books and to study, yet, in logical, systematic and intelligent study and with economical use of time.

Though careful and persistent in his legal studies, Mr. Osborne found time for other pursuits. He was a musician of no mean knowledge of music and as a member of the Salem Oratorio Society, he did much to give that organization its high reputation in this community.

He was in no sense a politician, yet he took a lively interest in public affairs, not only national and state but municipal, and here as in all other things, his desire was to attain and secure the highest and best condition. He was, as the saying goes, born a Republican and affiliated generally to that party. Yet, when it seemed to him that the good of the country or of the state or of the city could be best served otherwise, than through the domination of that party, he never hesitated to disclaim a fealty to party or any political allegiance which would require him to support party contrary to his sense of public duty.

He neither held nor sought public office, yet he knew the

needs of the community much better than many who were looked upon as leaders of men and moulders of public opinion.

Still it must be said of him that he did not possess those qualities which seem essential to success in public life. His manners were quiet, his disposition was retiring, he was pre-eminently sincere, he was incapable of juggling with public questions or public measures. He looked into them carefully and formed his conclusions deliberately ; but once formed, his conviction was given and adhered to without equivocation or hesitation. Such are not especially the characteristics of our successful public men. These qualities do not attract votes or arouse public acclaim.

My own acquaintance with Mr. Osborne dated from the time of his admission to the bar. Having been admitted myself a short time previous, we opened an office together and continued thus associated until he assumed the duties of clerk of court already mentioned. But the acquaintance then formed continued until his death. This association and acquaintance gave me an opportunity to know him and to judge him as a man and a friend. His character was pure and simple. He was conscious of his learning and attainments, but not vain of them. No man would more readily acknowledge that in the performance of life's work, not only is great ability desirable, but that men of ordinary merit were necessary, and that they performed its greater part. If he was ambitious his ambitions were high and honorable, and if he failed in them he bore his disappointment with a manly resignation, trusting that the better course had been pursued and with naught but the kindliest feeling for those who had checked his hope.

He was preeminently truthful. Of deceit, artifice or subterfuge of any degree he was constitutionally incapable. Wrong of all kind was obnoxious to him ; yet few men had a broader or a more ready charity for the frailties of our nature.

He was religious but in his religion there was no cant, no

hypocrisy, no intolerance. His was the religion of the heart rather than of the pulpit, not so much of the church as of Christ.

Such a man I found our late brother as a neighbor, as a companion and as a friend. And as a son and brother, a husband and father, in the bosom of the family, under the sweet and genial sunlight of home, these goodly qualities must, I am sure, have opened into a fuller and brighter bloom. That the members of his family and they that come after them and after us may know that his brethren at the Bar appreciated his ability as a lawyer and his worth as a man, I move that this memorial be placed on the records of this Court.

Mr. Alden P. White said:—

May it please your Honor:—It is a sad pleasure to second the request that this beautiful and truthful memorial be spread upon our records. In evidence of what has therein been set forth as to the limited acquaintance of Mr. Osborne on the part of members of this Bar except where he resided, it happens that none of the representatives of this locality who are here present were acquainted with him. It is a commentary that is not pleasing to our vanity, that a life so praiseworthy in its private and professional aspects, did not attract more general notice and esteem. But while Theodore Moody Osborne was not widely known, his plane of friendship was exceptionally high. The quality of the praise which he fairly won by his attainments was infinitely better than ordinary popularity. Lawyer, scholar, Christian gentleman; his character stood the test of intimate acquaintance and always proved true.

But if Mr. Osborne was not well known at this Bar, none of our associates had the privilege of so close and valued acquaintance with the Bench of this Honorable Court as necessarily attended his official duties in the equity sessions concerning which the memorialist has spoken. And doubly fortunate are we in these exercises, in that Your Honor, hav-

ing shared with the deceased in the responsible oversight of an educational institution of wide repute, brings to the consideration of this memorial no mere formal acquiescence, but the appreciative regard of sincere friendship, the sorrow of personal loss.

There is soon to be published a volume of memorials which we and our predecessors of the Essex Bar have upon occasions like this asked the Court to have spread upon its records. It contains the names of many men distinguished in their day and generation, the fame of whom will not soon pass away, and other names which are for the most part forgotten.

This memorial, will, I am informed, conclude the book. The reader will find therein chapters of comparative fame. Though this last chapter will be deficient in this respect, the life here commemorated is not to be measured by standards of so called greatness but by those final, absolute tests of true manhood in which the sounding brass and tinkling cymbal have no part.

Mr. William D. Northend said:—

May it please your Honor:—I cannot permit this occasion to pass without an expression of my deep regard for the subject of this memorial.

Mr. Osborne was distinguished for his intellectual qualities. He had a remarkable power in grasping a subject, of concentrating his mind on it, winnowing the chaff from the wheat, obtaining a clear comprehension of it, laying up in his mind the substance without cumbering it with unnecessary details. What he studied he mastered. As the memorialist has well said, he was not a bookworm in the sense of constantly and aimlessly poring over books. Yet he was a thorough student. He made the most of his time, but always intending to so work as to keep his mind fresh and vigorous.

Those who knew him in his practice at the Bar, or in the performance of his duties as equity clerk, fully concur in acknowledging his learning and his ability.

But I especially desire to speak of Mr. Osborne in his private

life. I knew him from his early childhood. As a youth, whilst entering with zest in sports with his associates, he manifested to them a quiet, gentle dignity which won for him the respect of all. As a man, his character was immaculate. It seemed to me impossible for him to do or think anything wrong. He was the delight and pride of his parents' household, and his married life was a most happy one.

RESPONSE OF MR. JUSTICE BISHOP.

GENTLEMEN OF THE BAR :—The discriminating memorial which has been presented, and the thoughtful addresses which have been made, are very touching.

It is just and suitable that these proceedings should take place in the case of Mr. Osborne. He was a man of unusual acquirements and promise in certain departments of the law, of cultivation in all good learning ; one who followed a very high ideal both in his profession and in his life, and a person of the greatest sweetness and charm of disposition and manner.

In thinking of the record of his life, one is struck by the diversity of the subjects he made himself acquainted with. He chose the law at last as his life work, after he had given much of life work to other services, and he carried to the law the culture acquired in them.

His especial department in law was Equity Jurisprudence, and he was a skilful master in Equity Procedure. He acquired proficiency in this, through an excellent power of exact statement, gained both from natural aptitude and careful training ; and this was cultivated by practice in equity causes under a sense of pride in the work, and a sense of duty to follow the best methods in it.

When in 1883 jurisdiction in equity was conferred upon the Superior Court, it was of great consequence that there should be in charge of this part of the work in Suffolk county a clerk having the qualifications possessed by such a man as Mr. Osborne. He was recommended for the place by the late Chief Justice Brigham, and the service which he ren-

dered in it for ten years, in establishing methods of practice, and in assisting and relieving the court in the constantly increasing volume of equity business which poured in upon it, was very great. No man in the state was better fitted for this, and but few lawyers in the Commonwealth had attainments in this direction equal to his. His work is buried in the records and files of the Clerk's office, most of it never to come to light again ; but it is like the carving in the remote recesses of ancient cathedrals, as genuine and true to a high standard as if it were to be seen and read of all men.

Mr. Osborne was a man of real modesty, and of a fine public spirit. He loved the institutions of Essex County. The Peabody library, and the many unique organizations of Salem were dear to his heart ; he was a useful member of the Board of Trustees of Phillips Academy, a great school in your midst, second in age to one other only in the country, and that also of Essex county.

He possessed deep and healthy religious convictions, and broad and tolerant religious views. I mark it as an indication of the increasing hold upon the community (if I may say so) of a common religious feeling, that one whose technical faith is so different from his, Mr. Crowley wrote so appreciative a memorial of the character of his fellow student and friend. A sobering sense of everlasting truth, however differently apprehended, makes the whole world kin.

Essex county is the home of lawyers. From it came Chief Justice Sewall, and the great Chief Justice Parsons ; from it, within the memory of the nestors of your Bar, Mr. Northend and Mr. Saunders—(still preserved to you),—what a procession has passed,—Choate, Putnam, Saltonstall, Story, Rantoul, Cushing, Lord, Ives, Burley, Carter, Thompson, and a host of others, among whom are many who should rank with the highest.

In what department of human work will there be found greater intellectual power, or finer training? And though it be true that a lawyer's life is like a story written upon the water, yet let us believe that the progress of the world has

not been without its impetus from us too. The science of jurisprudence *has* advanced; the laws and the administration of them *are* better now than they were three hundred or one hundred years ago; and we will claim that we have a right to call our lives useful, whether with forensic splendor, or with unobtrusive and unknown fidelity, we travel our common path.

The resolutions of the Bar, and the proceedings will be entered upon the records, and the court will now adjourn.

IN MEMORIAM.

We give the following brief biographical notices of some of the more prominent members of the Bar prior to the formation of the Essex Bar Association :

John Chipman.

John Chipman was born in Marblehead, was the son of the Reverend John Chipman, and was graduated at Harvard in 1738. He was the father of Ward Chipman of New Brunswick, one of the commissioners in settling the boundary line under the treaty of 1783. His grandson was chief justice of that province. Mr. Chipman died of an apoplectic fit while attending court in Portland, Maine, July, 1778. He frequently attended the courts in Maine in company with Gridley, Jonathan Sewall and other gentlemen of that character.

Daniel Farnham.

Daniel Farnham lived in Newburyport. He was graduated from Harvard college in 1739, and died in the year 1776. Honorable Levi Lincoln read law in his office. His practice extended into Maine, and he was for a short time King's attorney for the county of York. He had an extensive practice to the time of the Revolution.

William Pynchon.

William Pynchon was born in Springfield in 1725, and was a descendant from William Pynchon who was the founder and first magistrate of Springfield. He was graduated from Harvard college in 1743. In 1745 he removed to Salem where he studied law with Judge Stephen Sewall and resided there until his death in March, 1789, at the age of 64. He was an eminent lawyer, particularly skilful in special pleading, a finished scholar and an accomplished gentleman.

Nathaniel Peaselee Sargent.

Nathaniel Peaselee Sargent was born in Methuen in 1731, and was graduated at Harvard College in 1750. He practised law in Haverhill and held a high rank in his profession, though never a distinguished advocate. At the organization of the Supreme Judicial Court in 1775 he was appointed judge of that court and declined the office; but in the following year he was reappointed and accepted the place. In 1790 he succeeded Judge Cushing in the office of Chief Justice and held it until his death in October, 1791. He was 60 years of age at his death, and left behind him the character of an able and impartial judge.

Theophilus Bradbury.

Theophilus Bradbury was born in Newburyport in 1739, and graduated from Harvard College in 1757. He studied law in Boston, and commenced the practice of it in Portland, then called Falmouth, in 1761. Whilst there Theophilus Parsons studied law in his office. In 1775 Portland was burned by Commodore Mowat, and in 1779 Mr. Bradbury removed to Newburyport, his native town, where he gradually rose to distinction in his profession and in public life. Besides many other important offices which he held, he was elected a member of Congress under Washington's administration. In 1797 he was appointed a justice of the Supreme Judicial Court, in which office he continued until his death, in 1803.

John Lowell.

John Lowell was born in Newburyport in 1743, and was graduated at Harvard College in 1760. He studied in the office of Oxenbridge Thacher, and commenced practice in Newburyport, but soon after removed to Boston. He there became a leading and distinguished lawyer, and took a prominent part as a member of the committee that framed the constitution of Massachusetts. He was elected a member

of Congress in 1781, and in 1782 was appointed one of the three judges of the Court of Appeals, to whom appeals lay from the Court of Admiralty. He was appointed judge of the District Court of the United States in 1789, which office he held until 1801, when he was made chief justice of the first circuit under the then newly organized United States Court. The act creating the court was repealed in the year 1802. He was an eminent lawyer, a learned civilian, an able judge, a distinguished patron of science, and a finished scholar. He resided for some time previous to his death in Roxbury, where he died May 6, 1801. He left three sons: John Lowell, who resided in Roxbury; Francis C. Lowell, who gave name to the city of Lowell, having been an early proprietor of factories established there; and Charles Lowell, who was an eminent clergyman in Boston. From him have descended the many distinguished families of the name in this Commonwealth.

Timothy Pickering.

Timothy Pickering, born in Salem, July 17, 1745, was graduated at Harvard college in 1763. He was admitted to the Bar in 1768. He was appointed Register of Deeds, and in 1775 was appointed Judge in the Court of Common Pleas for Essex County, and sole Judge of the Maritime Court for the Middle District. He took a great interest in public affairs, was a colonel of militia and opposed an armed resistance to the British soldiers, when on February 26, 1775, at the drawbridge of the North river, in Salem, he prevented their crossing to seize some military stores. He joined Washington in New Jersey in the fall of 1776 with his regiment of 700 men; was appointed adjutant general of the army in May, 1777; was present at the battles of Brandywine and Germantown; was made a member of the board of war; and succeeded Green as quartermaster, Oct. 5, 1780. After the war he resided in Philadelphia. In 1787 he was a delegate to the Pennsylvania convention for considering the United States Constitution, and earnestly favored its adoption. He

was United States Postmaster General from November, 1791 to January, 1794; was appointed United States Secretary of War in 1794, and United States Secretary of State in 1795; was made Chief Justice of the Essex County Court of Common Pleas in 1802; was United States Senator from 1803 to 1811, and a member of the board of war during the war of 1812. He published many articles upon political subjects. He died in Salem, January 29, 1829.

Theophilus Parsons.

Theophilus Parsons was born in Byfield parish in Newbury in February, 1750. He was prepared for college at Dummer Academy under the celebrated Master Moody. He was graduated from Harvard college in 1769, and afterwards studied law with Honorable Theophilus Bradbury at Portland and, while there, taught the grammar school in that town. But the conflagration of the town by the British in 1775 obliged him to return to his father's house in Byfield, where the eminent Judge Trowbridge was then living, and he received very valuable instruction from him. He soon commenced the practice of law in Newburyport, and rose to unrivalled reputation as a lawyer. In 1777 he wrote the famous "Essex Result," and in 1779 was an active member of the convention which framed the state constitution. In 1789 he was a member of the convention for considering the proposed Constitution of the United States, and was very largely instrumental in procuring its adoption. In 1801 he was appointed attorney general of the United States, but declined to accept the position. In 1800 he removed to Boston, and in 1806 he was appointed Chief Justice of the Supreme Judicial Court of Massachusetts. He died in Boston, October 13, 1813, with a reputation as a lawyer and judge unequalled in Massachusetts.

Samuel Sewall.

Samuel Sewall was born in Boston, Dec. 11, 1757, and graduated from Harvard college in 1776. He was a great

grandson of Chief Justice Samuel Sewall of Witchcraft fame. He practised law in Marblehead, where he soon became eminent in his profession. He was a member of the state legislature; a member of the United States House of Representatives from 1797 to 1800; was appointed Judge of the Supreme Judicial Court in 1800, and Chief Justice in 1813. He died at Wiscasset, Maine, on June 8, 1814.

Rufus King.

Rufus King was born at Scarborough, Maine, on March 24, 1755. He received his first degree at Harvard College in 1777 and immediately commenced the study of law in Newburyport, in the office of Theophilus Parsons. On completing his studies, he was admitted to the Bar in Essex County and opened an office in Newburyport. Whilst there, he was chosen to represent the town in the General Court of Massachusetts, and afterwards was elected a member of Congress under the old confederacy. In 1788, he removed to New York. In 1789, he was elected to the New York legislature, by which body he and General Schuyler were chosen the first senators from the state under the constitution of the United States. From 1796 to 1804 Mr. King was minister to England. In 1813 he was again elected to the United States Senate by the New York legislature. In 1819, he was re-elected to the Senate. In 1825, he was appointed minister to England by President Adams, but returned in ill health in 1826. He died April 29, 1827.

Nathan Dane.

Nathan Dane was born in Ipswich, December 27, 1752, and graduated from Harvard College in 1778. He practised law in Beverly where he resided until his death. He was a member of the Massachusetts legislature from 1782 to 1785. He was a member of Congress from 1785 to 1788. He was afterwards a member of the Massachusetts senate and was, at different times, on commissions for revising the laws of the state. He was the framer of the celebrated ordinance

passed by Congress in 1787 for the government of the territory northwest of the Ohio. In 1814 he was a delegate to the Hartford Convention. His professional practice was extensive. His great work entitled "A General Abridgment and Digest of American Law" fills nine large volumes. The Dane professorship of law at Harvard College and the law hall were founded by his munificence. He died in Beverly February 15, 1835.

Dudley Atkins Tyng.

Dudley Atkins Tyng, born in Newburyport, September 3, 1760, was graduated from Harvard College in 1781. He studied law and commenced practice in Newburyport; was United States Collector of Newburyport and afterwards reporter of the Massachusetts Supreme Judicial Court until his death, August 1, 1829.

William Prescott.

William Prescott was born in Pepperell, Massachusetts, August 19, 1762. He was graduated from Harvard College in 1783. He taught school in Beverly, studied law with Nathan Dane and in 1787 commenced practice in Beverly. He soon removed to Salem and was a representative and senator in the state legislature. In 1813 he was offered a seat on the bench of the Supreme Judicial Court which he declined. He removed to Boston in 1808; was a delegate to the Hartford Convention in 1814. In 1818 he was appointed Judge of the Court of Common Pleas for Suffolk and in 1820 was elected a delegate to the State Constitutional Convention. He was son of Colonel William Prescott of Revolutionary fame and father of William H. Prescott the historian. He died in Boston, December 8, 1844.

Samuel Putnam.

Samuel Putnam was born in Danvers, April 13, 1768; he was graduated from Harvard College in 1787; studied law

and commenced practice in Salem in 1790 and attained a high position at the Essex Bar. He was senator from Essex for four years and a representative one year, and from 1814 to 1842 was a Judge of the Supreme Judicial Court of Massachusetts. He presided at the trial of the Knapps at Salem in 1830. He died in Somerville, July 3, 1853.

William Cranch.

William Cranch was born at Weymouth, July 17, 1769. His mother was a sister of the wife of President John Adams. He was graduated at Harvard College in 1787, and was a classmate of Samuel Putnam; was admitted to the Bar in July, 1790, and practised in Braintree and in Haverhill. In October, 1794, he removed to Washington. President Adams appointed him junior associate Judge of the district court for the District of Columbia, of which he was Chief Justice from 1805 to 1855. He published nine volumes of reports of the United States Supreme Court and six volumes of reports of the Circuit Court of the District of Columbia. He also prepared a code of laws for the District. In 1827 he published a memoir of John Adams. He died in Washington, September 1, 1855.

Charles Jackson.

Charles Jackson was born in Newburyport in 1775. He was graduated at Harvard College in 1793, studied law with Parsons and entered into practice in Newburyport. Shortly before Parsons was raised to the bench, Jackson removed to Boston and practised there until 1813, when, upon the death of Judge Sedgwick, he was appointed a justice of the Supreme Judicial Court of the state. In 1823, he resigned his office on account of ill health and in 1824, resumed the practice of his profession in Boston. He was a member of the State Constitutional Convention in 1820, and in 1833 was appointed one of the commissioners to codify the state laws. He published a treatise on practice and pleadings of real actions. He died in Boston, December 13, 1855.

John Pickering.

John Pickering was born in Salem, February 17, 1777. He was son of Colonel Timothy Pickering. He was graduated at Harvard College in 1796, and studied law in Philadelphia. He was two years in London as private secretary of Rufus King, United States minister to England. In 1801, he resumed his legal studies, commenced practice in Salem and remained there until 1827, when he removed to Boston. He was three times a representative from Salem, twice a senator from Essex County, and once from Suffolk. He was a member of the Executive Council. He was a member of the commission for revising the Statutes of Massachusetts in 1833. He contributed very valuable articles to the American Jurist, Law Reports and the North American Review. His principal work was a Greek and English Lexicon, which was finished in 1826. In 1806, he was elected Hancock Professor of Hebrew in Harvard College. He was president of the American Academy of Arts and Sciences and a member of many scientific and literary societies in Europe. He died in Boston, March 5, 1846.

Joseph Story.

Joseph Story was born at Marblehead, September 18, 1779, and graduated from Harvard College in 1798. His father was a surgeon in the Revolutionary army. He studied law with Judge Samuel Sewall and afterwards with Judge Samuel Putnam; was admitted to the Bar in July, 1801, and began practice in Salem. In 1804, he published a volume of poems. From 1805 to 1808, he was a member of the legislature and a leader on the republican side; was a member of the United States House of Representatives in 1808 and 1809; was speaker of the Massachusetts House in 1811, and from November 18, 1811, to the time of his death was Associate Justice of the United States Supreme Court. In the state constitutional convention of 1820, he was a very useful member. He was Dane professor of law in Harvard College from 1829, until the time of his death. His judicial works

show extraordinary learning and profound views of the science of law. They include a commentary on the Constitution, on Conflicts of Laws, and many other legal subjects. His opinions in the Supreme Court form an important part of thirty-four volumes. He died in Cambridge, September 10, 1845.

Ebenezer Mosely.

Ebenezer Mosely was born November 21, 1781; he was a direct descendant from Governor Caleb Strong, and was by marriage nearly connected with Chief Justice Parsons. He was graduated from Yale College in 1802. He studied law one year with Judge Chauncey in New Haven, one year with Judge Clark of Wyndham, and one year with his uncle, Judge Hinkley of Northampton. He settled in Newburyport, where he remained during the rest of his life. He was a very able lawyer, and had a very large and lucrative practice. He was engaged in the famous Goodrich trial at Newburyport. He gave the address of welcome to Lafayette when he visited Newburyport; was colonel of the 6th regiment which participated in the celebration of the two hundredth anniversary of Newburyport. He was for several years a member of the State Senate; was a presidential elector in 1832; president of the Board of Trustees of Dummer Academy, and president of the Essex Agricultural Society. He died August 28, 1854.

Leverett Saltonstall.

Leverett Saltonstall was born in Haverhill, June 13, 1783, and was a descendant from Sir Richard Saltonstall, one of the fathers of the Bay Colony. He graduated at Harvard College in 1802. In 1805 he commenced practice in Salem, where he remained until his death, May 8, 1845. He was a State Senator in 1831; was first mayor of Salem in 1836; was a member of the United States House of Representatives from 1838 to 1843. He was one of the most eminent lawyers in Essex county.

Benjamin Merrill.

Benjamin Merrill was born in Conway, New Hampshire, March 13, 1784. He was grandson of John Merrill of Haverhill. He was graduated from Harvard College in 1804. He studied law first with William Steadman of Lancaster, New Hampshire; afterwards with Francis D. Channing of Boston. He first practised in Marlborough for about a year, thence removed to Lynn, and soon after to Salem, where he spent the remainder of his life. He was for several years partner with Samuel Putnam, until the latter was appointed a justice of the Supreme Judicial Court. He was a member of the State Legislature one year. He was a very able lawyer and highly respected throughout the county; was a member of various learned societies, and took great interest in the literary and other societies of Salem. He died in Salem, July 30, 1847.

David Cummins.

David Cummins was born in Topsfield. He graduated from Dartmouth College in 1806; studied law in the office of Judge Putnam, in Salem, and was admitted to the Bar in 1809. He was a very successful practitioner in Salem until he was called to the bench of the Court of Common Pleas, in 1828. He continued in that office until 1844, when he resigned. He died March 30, 1855. At the Bar he was a zealous and impassionate advocate; and on the Bench he was distinguished for his ability, learning, and impartiality.

Benjamin Lynde Oliver.

Benjamin Lynde Oliver was born in Salem in 1788. He graduated from Harvard College in 1808, studied law with Joseph Story and Samuel Putnam and was admitted to the Bar in 1809. He was the author of "Forms of Practice," "Practical Conveyancing," "Forms in Chancery, Admiralty and Common Law." He died in Malden, June 18, 1843.

Octavius Pickering.

Octavius Pickering was born in Wyoming, Pennsylvania, Sept. 2, 1792, during the temporary residence there of his father, Col. Timothy Pickering; came to Salem in 1801. Graduated from Harvard College in 1810, and was admitted to the Bar in Essex County in 1813. After practising here several years he removed to Boston. He was engaged in many literary works, his most important work of that kind being the twenty-four volumes of Massachusetts reports known as "Pickering's Reports." He died October 29, 1868.

Andrew Dunlap.

Andrew Dunlap was born in Salem in 1794; graduated from Harvard College in 1813. He was for several years United States attorney for the district of Massachusetts. He was the author of Dunlap's Admiralty Practice. He died in 1835.

George Lunt.

George Lunt was born in Newburyport December 31, 1803; was graduated from Harvard College in 1824; was principal of the Newburyport High School for several years; was admitted to the Bar in 1831, and practised law in his native town until 1848, when he removed to Boston. In 1849 he was appointed United States attorney for the district of Massachusetts. Several volumes of poems by him have been published, also several addresses upon public matters. He was editor of the Boston Courier from March, 1857, until 1862. He died in Boston, May 16, 1885.

George Wheatland.

George Wheatland was born in Salem November 10, 1804. He was graduated from Harvard college in 1824. He studied law with Leverett Saltonstall, and was admitted to the Bar in 1828. From that time until his death in 1893 he practised law in Salem. For the first twenty years he had a large practice in the courts. After that his practice was mostly

an office practice which was larger and more lucrative than that of any of his associates. In the last years of his life, while not abandoning his profession, he was largely engaged in a real estate business which was very profitable. He was a man of great individuality and of decided opinions. He was father of Major George Wheatland.

Robert Rantoul.

Robert Rantoul was born in Beverly, August 13, 1805. He was graduated from Harvard college in 1826. He studied law with Leverett Saltonstall in Salem, and was admitted to the Bar in 1828. He began practice in South Reading (now Wakefield); removed to Gloucester in 1833, and to Boston in 1838. He was a member of the state House of Representatives from Gloucester from 1833 to 1837; was collector of the port of Boston from 1843 to 1845; was United States District Attorney for the district of Massachusetts in 1845; was United States Senator for a part of the unexpired term of Mr. Webster from 1851 until his death in Washington, August 7, 1852.

Ellis Gray Loring.

Ellis Gray Loring was born in Boston in 1800. Studied law at the Harvard Law School and was admitted to the Bar in Essex County in 1828. He was intimately connected with the anti-slavery movement. He died in Boston, May 24, 1852.

Joshua Holyoke Ward.

Joshua Holyoke Ward was born in Salem, July 8, 1808. He was graduated from Harvard college in 1829. He studied law with Leverett Saltonstall, and at the Harvard law school, and commenced practice in South Danvers (now Peabody), in 1832. He removed to Salem in 1838, and took the office of Leverett Saltonstall, who was then in Congress. He was a Representative from Salem in the state legislature for several years, and Justice of the Court of Common Pleas from 1844 until his death in Salem, June 5, 1848.

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